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Current Topics.

Mr. Justice McCardie.

EVERY MEMBER of the legal profession must have heard, with keen regret, of Mr. Justice MCCARDIE's sudden illness while on circuit, but have since heard with much satisfaction of the learned judge's progress towards recovery. As a judge, he is one of the most popular of the occupants of the bench, not that he courts popularity, but because his kindly manner and his intense interest in the law and its efficient administration have endeared him to both branches of the profession. His love for the law and the story of its development appears with striking force in his reading on "The Law, The Advocate, and The Judge," delivered before the Society of the Middle Temple last year—reprinted from our columns—and also in the lecture delivered more recently at University College, London, on "Case Law," a subject on which no one can discourse more eloquently than he. Although he loves the reports and studies them assiduously, his reading is not limited to subjects within the purely professional range, and his judgments are frequently enlivened and illumined by some felicitous quotation or reference to some of the great classics of English literature. Another fine trait of his character is the encouragement he has so frequently given to the writers or editors of text-books, whose services, he has been heard to observe, are not always recognised as they should be by the bench. All will join in wishing him a speedy return to his post in completely restored health.

Capital Punishment.

THE HOME SECRETARY has complained forcibly of the increasing public agitation for reprieves in murder cases after magistrates, judge and jury, Court of Criminal Appeal, doctors and other experts have considered the cases in detail. Clearly, as long as the law remains what it now is, no Minister ought to be deflected from his duty in carrying it out by any clamour on the part of any section, or indeed, by the majority, of the public. As Sir WILLIAM JOYNSON-HICKS points out, agitation is generally conducted by persons who cannot possibly have the same knowledge of the facts as those who have the heavy responsibility of decision laid upon them, and their action does not help the authorities. This habitual clamour, however, may be only a symptom of an increasing conviction on the part of thinking people that capital punishment is neither justifiable nor expedient. There is undoubtedly a large section of the public who would support any petition for the reprieve of any murderer, irrespective of the facts of the particular case. For the moment, we are not concerned to advocate either the abolition or the retention of the death penalty; it is a profoundly difficult and important question, upon which every thoughtful and unprejudiced person is entitled to form an opinion: a question upon which laymen may be heard with as much attention as lawyers. But it may well be urged that the signs are not wanting that the time is ripe for putting the matter before the country for its decision. There is no longer any excuse for either ignorance or apathy.

Can Animadversion on a Jury be Contempt of Court?

THE CASE of contempt dealt with in *R.* v. *The Editor of "The New Statesman,"* which contempt took the form of "scandalising" Mr. Justice AVORY, raises an interesting question. Suppose contemptuous words are uttered of a jury who have tried a case, so bringing trial by jury into contempt, and generally lowering the authority of juries, can the utterer be proceeded against for contempt of court? A good many hard things are said of juries, one of the hardest being reported to have been said by no less a person than the Lord Chief Justice himself, in the recent case of *R.* v. *Rust*, when, addressing the accused after his acquittal, he is reported to have remarked, "You are exceedingly fortunate in your jury," the innuendo being that the jury were either stupid or wilful. The trial judge, rebuking the jury, must, presumably, be taken to be acting judicially, and himself to be immune from proceedings for contempt. But would anyone else be immune? And what are the limits of criticism of a jury? They are judges of facts, and can presumably be "scandalised" as much as can a judge of the law. It may perhaps be said that that particular jury's authority cannot be lowered, for it will never assemble again, whereas the judge whose authority has been diminished by scandalisation will remain to try other cases. Perhaps a scandalised jury's true remedy is an action for defamation. We leave it to our readers to consider.

Moneylenders' Trade Names.

THE STRICTNESS of the provisions of the Moneylenders Act, 1927, with regard to names was illustrated by a recent case before Mr. W. H. S. OULTON, the Lambeth Magistrate. C.B. and his wife applied for certificates to carry on business in partnership, under the style of "C.B. and Co." Questioned by the court, the applicants said that they were not registered under the Registration of Business Names Act, 1916; the husband had hitherto carried on business alone in his own name. By s. 2 of the Moneylenders Act, 1927, a certificate may authorise an applicant to carry on business in his true name, or in the name of a firm in which he is a partner, not being a firm required to be registered under the Registration of Business Names Act, 1916. (There is a proviso as to business names already registered, not in point here.) The name of a

firm need not be registered under the Act of 1916 if it consists of the surnames of all the members of the firm, with or without Christian names or initials, and without other additions. The addition of "and Co." would necessitate registration: see *Evans* v. *Piauneau*, 1927, 91 J.P. 97, an Aliens Restriction Act case. It was pointed out to the applicants by the learned magistrate that they could carry on business as "C.B. and E.B." or under other styles complying with the law, but they must not add the words "and Co." C.B. thereupon suggested that he should be granted a certificate to trade in his own name alone. As, however, he had advertised in a newspaper, in accordance with the rules, that his intention, and that of his wife, was to apply for a certificate authorising the use of the style "C.B. and Co.," he was informed that no certificate at all could be granted upon his present application. The applicants were advised to proceed *de novo*, using "C.B. and E.B." as the name of the firm, in which case certificates might be granted.

Substitution of Juror.

During a murder trial at the last Derbyshire Assizes, a juryman collapsed while a doctor was giving evidence as to the injuries of the deceased. It was later reported to Mr. Justice Hawke that the juror had been upset by the ghastly details, and that if he were to continue it might have a serious effect on his health. The learned judge thereupon referred to the Criminal Justice Act, 1925, s. 15, which provides that in an emergency such as the above "the jury shall nevertheless, subject to assent being given in writing by or on behalf of both the prosecutor and the accused, and so long as the number . . . is not reduced below ten, be considered . . . properly constituted . . ." He informed counsel that if they did not both agree he had no wish to know why, or which party objected. On being informed that another jury would probably have to be sworn, the learned judge asked whether an adjournment to another assize was desired, but at the request of counsel he consented to discuss the procedure in his private room. Mr. Justice Hawke later announced that he would retain the eleven jurymen and swear an additional one, but that it was necessary to discharge the jury and re-start the case with the new jury. The incident illustrates the difficulty, in a murder trial, of utilising the facilities provided by the above section.

A Constitutional Right.

Lord Brougham is reported to have said that "the whole machinery of the State, all the apparatus of the system and its varied workings end simply in bringing twelve good men and true into a box." This may be a slightly exaggerated view of the jury system, but no one can doubt that "the twelve good men" are one of the bulwarks of English liberty. This has long been the case, and we are reminded that it is still so by the recent decision of the Court of Appeal in *Broome* v. *Agar* reported in *The Times*, 24th ult. In that case the plaintiff, a chauffeur, complained that the defendant, his late employer, slandered him by falsely alleging that he had given "joy rides" to women in her Rolls-Royce motor car, and that he was a "rotter." The jury found that the defendant spoke the words complained of, but that they were not defamatory of the plaintiff and judgment was entered for the defendant. The plaintiff now applied for a new trial on the ground that the verdict was perverse and one which no twelve reasonable men could find. Scrutton, L.J., said the case raised an important question as to the functions of juries. One authority he said laid down the principle thus:

> "For twelve honest men have decided the cause,
> Who are judges of fact and not judges of laws."

The jury had exercised a constitutional right, and this Court could not interfere, though he hesitated to say that the court would never interfere. Only in the most extreme cases should a judge allow his view to override that of the constitutional tribunal. Sankey, L.J., agreed. Russell, J., dissented. He thought that the verdict was perverse and should be set aside. The case seems to be only another instance of the divergence of view between law and equity which the Legislature has at times tried to modify, the latest instance being the Judicature (Consolidation) Act, 1925, ss. 43 and 44.

Children and "Lures."

In the law of torts we have long been accustomed to such catch phrases as "traps," "attraction," and "allurement," although their employment has not invariably tended to the elucidation of the law. "Attraction" and "allurement" have been commonly used in cases where children have sustained injury by straying on to ground belonging to others and meddling with something there which has proved to be dangerous when interfered with by inexperienced persons, and particularly by those of tender age. In *Cooke* v. *Midland and Great Western Rly. Co. of Ireland*, 1909, A.C. 229—a case which has been more discussed and questioned than probably any other decided by the House of Lords—a child between four and five years of age strayed on to a railway company's land and sustained injury by playing on a turntable, which, according to some of the judgments, constituted, where it was, and in the condition it was, an allurement to children, and in view of this the railway company ought to have taken steps to guard against injury being sustained by children who might be attracted to it. In nearly all the subsequent cases where *Cooke's Case* has been relied upon, it is significant that it has, in the technical phrase, been "distinguished." As Hamilton, L.J., said, in *Latham* v. *Johnson*, 1913, 1 K.B. 398, it is hard to see how infantile temptations can give rights, however much they may excuse peccadilloes; but it is not unnatural that full play should be made of the doctrine of allurement in actions in respect of injuries to children. Perhaps the boldest attempt, however, in this direction was that made in a recent case in Manitoba—*Pinkas* v. *Canadian Pacific Rly. Co.*, 1928, 1 W.W.R. 321—where a child between five and six years of age sustained injuries while climbing on to a slow moving goods train. It was suggested that the train, which, like most Trans-Atlantic trains, ran on an unfenced track, constituted a lure or a trap. Needless to say, the judge declined to accept this contention. "I am unhesitatingly of opinion," he said, "that the moving freight train was not a trap or a lure which the defendant company was bound to guard against, within the principle of the turntable cases and the like line of cases . . . Every child, old enough to be allowed out of his mother's sight, knows, or must be presumed to know, that just as fire burns, a moving train is a thing to keep away from, at least, not to run into, and so I cannot think that to escape liability for negligence railway operations must be held to be subject to the necessity of posting sentries in every railway yard and by every crossing, and at every point to which mischievous or venturesome children could lawfully or unlawfully gain access to rolling-stock." This appears to us to be good sense, and we believe it to be good law. It would certainly have been startling if, in such circumstances, the railway company had been saddled with responsibility. It remains true, however, as Hamilton, L.J., said, that children's cases are always troublesome.

Self-Incrimination.

It is always said that no person shall be forced to incriminate himself, and, in accordance with this rule, confessions obtained under a threat or a promise are excluded from being given in evidence, except so far as facts discovered as a result of such confessions are independently proved, when the part of the confession relating to these facts becomes admissible. The classic instance is that of the burglar's lantern found in a pond where, in an involuntary confession, he had said it was. It has sometimes occurred to us that the result of a police surgeon's examination of a drunken man

is of the nature of a forced confession. The prisoner often, of course, asks for a medical examination, and submits to it voluntarily, but in certain cases, the commonest being the drunken motorist, he is examined as a matter of routine, and, at least sometimes, submits because he is impressed by the atmosphere of authority with which he is surrounded. But the furred tongue, the pupil which will not react to light, and the other symptoms whose cumulative result is a diagnosis of drunkenness, are facts discovered as a result of this involuntary submission. Suppose, under the same sense of compulsion, the accused confesses, in answer to the doctor's questions, what drinks he has had. Are his words admissible or not? The facts to which the doctor deposes are not discovered as a result of the verbal confession, and the words would appear therefore to be inadmissible. In this connexion it has to be remembered that before a confession can be treated as admissible in a criminal trial, it must be proved affirmatively that it was free and voluntary. No attempt is ever made at such proof in the cases we are considering, and it looks as though irregularities are daily perpetrated without thought.

Illegal Burial.

THE RE-OPENING of a family grave may have unexpected consequences, as shown by the recent prosecution at Stratford, Essex. By Order in Council, dated the 8th February, 1896, a closing order was made "forthwith and entirely in the Parish Church of Leyton, and also in the churchyard, except vaults where coffins are separately enclosed, and such graves as can be opened to the depth of five feet without disturbing coffins." The relatives of those buried could therefore have graves near them. An old and respected inhabitant of the parish having died, the vicar thought he should officiate himself. The vicar was away during the three days preceding the funeral, and on the day for which it was arranged he asked the sexton if everything was in order. The sexton replied that the deceased was to be buried in the family grave. The facts were that the deceased came from the North, and had no relatives buried at Leyton, but the sexton, having had an application from the widow, had arranged for someone else to surrender a place in the graveyard. For this the sexton had received £8, which he had sent to the former owner without telling the vicar. The Leyton Borough Council summoned the vicar and sexton under the Burial Act, 1855, s. 2, for that they did knowingly and wilfully bury, act or assist in burying the body of —— in a grave in a part of the churchyard in which burials were ordered to be discontinued. In addition to considerations of health and the contravention of the Order, there was the further objection that the expenses of upkeep of closed burial grounds are borne by the poor rate. The sexton pleaded guilty, and the vicar not guilty. The Superintendent of Open Spaces stated that having seen an open grave, in which was a coffin with the lid off, he had caused measurements to be taken. The undertaker stated that he saw no signs of human remains or old coffins. After an adjourned hearing the magistrates decided to convict, and each defendant was fined £5 and ordered to pay 10 guineas costs. The maximum penalty under the above section is £10.

The Alleged Sins of "Dora."

A CORRESPONDENT wrote last week to *The Daily Telegraph*, stating that at 7.20 in the evening he went into a general shop to buy a packet of table salt, but was told that he could not then be supplied, for the sale would be against the law. The information was volunteered, however, that he could lawfully be served with one penny-worth of block salt. The correspondent, therefore, perhaps naturally somewhat scornful of this legal nicety, further enquired whether he would be infringing the law by pulverising the block, and, if the answer was in the negative, why others should be penalised for doing the same thing—and, generally, why the law is not replaced by common sense. The particular riddle he propounds is not, of course, one which an ordinary lawyer can answer off-hand, and a member of the profession might be as surprised at the distinction as a layman. A possible solution, of course, was that the shopman was mistaken, or wished to place the statutory restrictions which he found so troublesome in a worse light than necessary. If he was right in his law, the solution must lie in the fact that the sale by retail of block salt and table salt is carried on by different trades, and that the shops of one were lawfully open at the time in question but not the other. It is, of course, a fairly common experience to enter a stationer's and find that, of all the goods attractively displayed, newspapers only can be purchased. It may also be difficult to obtain soap from a chemist when the ordinary oilmen's shops are closed. The time mentioned in the problem above, after 7 but before 8, indicates that it rather arose from an order made under the Shops Act, 1912, than the Shops (Early Closing) Act, 1920—the latter being the real daughter of "Dora," adopted by Parliament, condemned to annual death, and respited so often under Expiring Laws Continuance Acts that CHARLES II's apology for his "unconscionable time a-dying" might well be deemed to fit her. As to the sale of particular articles where one trade impinges on another, reference may be made to *Shuck* v. *Banks*, 1914, 2 K.B. 491; *Margerison* v. *Wilson*, 1914, 79 J.P. 38; and *L.C.C.* v. *Welford's Surrey Dairies*, 1913, 2 K.B. 529 (whether "run honey" is "confectionery"). The possibility of anomalies has certainly not been lessened by the case of *Willesden U.D.C.* v. *Morgan*, 1915, 1 K.B. 349, laying down that a shopman, though he must not serve a customer with a particular article during forbidden hours, may point to an automatic machine on the premises, and bid him help himself.

Motives.

A GOOD MANY people must have felt a sneaking sympathy with the fifteen years old Manchester girl who made almost a habit of giving false alarms of fire "because she liked seeing the fire engine turn out." She was bound over; and, doubtless, now that she has seen how serious the consequences of her conduct might be, not merely to herself, but to the public, she will give up the practice. Trivial in itself, the incident illustrates a great principle. In dealing with offenders, and in assessing punishment, it is more important to judge by motives than by consequences. Truly, consequences cannot be disregarded, and it is a wholesome presumption that a man intends the natural consequences of his act. But the degree of guilt really depends on motives. With the young, as in the case of the Manchester girl, motives are not, as a rule (unless you are a psycho-analyst), difficult to discover. With adults, unless they are candid, motives often seem obscure. When they can be ascertained they should be the chief consideration, possibly in determining whether an offence has been committed; certainly in arriving at punishment in the case of the guilty. There is a great difference between the destitute man who breaks a window in a moment of despair, the militant suffragette who thought it the best way of proving her fitness for the vote, and the man who breaks a window in order to satisfy a private grudge. There is even more between the bigamist who agrees to a marriage ceremony to satisfy the demands of a woman who knows the true position and the bigamist who deceives an innocent girl in order to obtain her body and her fortune. The principle is becoming increasingly recognised, but at times it needs re-asserting. It is easy to drop back into the way of judging offences by their results, without pursuing the inquiry into motives. When the law was less elastic, Sir MATTHEW HALE, L.C.J., once persuaded a jury to acquit a man who had stolen bread to save himself from starvation. An old Norse Code went one better, in declaring that there should be no punishment for such an act. To-day, a merciful law allows the widest discretion to judges and magistrates, and discrimination becomes their duty and responsibility.

Administrative Justice.

On several occasions in recent years the Lord Chief Justice of England has denounced the increasing tendency of departmental bureaucrats to assume the powers of the Legislature and the Judiciary. There is no doubt but that in doing so Lord Hewart gave voice to the deep feeling of nervous apprehension which this tendency has aroused among members of all branches of the legal profession. The doctrine of the separation of governmental powers into watertight compartments, labelled respectively, "Legislative," "Judicial" and "Executive," has been so universally preached to generations of English men and women since the days of Montesquieu that we have learnt not only to regard it as an unmixed truth but also to venerate it as an immutable law of the British Constitution. It is not surprising, therefore, that the discovery of a secret process of steady infiltration of the powers and duties from two of the sealed compartments into the third has aroused general interest and suspicion. The astonishing thing is that the process should not have been detected sooner than it was and that the discovery should have been announced and explained in a general work long before the year 1928.

In a book* entitled "Justice and Administrative Law," Mr. W. A. Robson deals with one aspect of this process of infiltration, namely, the acquisition by administrative and domestic tribunals of extensive judicial powers and duties.

Having discussed and determined the meaning which he considers is usually and properly borne by the expression "judicial," Mr. Robson comes to the inevitable conclusion—a conclusion reluctantly reached more than a dozen years ago by no less eminent a student of the British Constitution than the late Professor Dicey—that there has for the last fifty years been gradually growing a large and important body of law enunciated and enforced by administrative as distinct from judicial tribunals—"a whole series of official tribunals more or less closely connected with the administrative departments of government, possessing power to decide questions of a kind which would 'normally' have come within the jurisdiction of the formal courts of law."

In chapter III of his book, under the title "Administrative Tribunals," Mr. Robson outlines the steps taken by Parliament to place the large and increasing number of judicial functions in the hands of special tribunals, and in particular in the hands of the great departments of State.

The character of such tribunals varies enormously. On the one side there are the Railway and Canal Commission—an innovation of the mid-Victorian period "a body whose structure and functions lie between those of a court of law on the one hand and an administrative tribunal on the other," and the Railway Rates Tribunal—in form an administrative body—but in fact exercising wide judicial powers. On the other side may be pointed out bodies of official referees such as those set up under the Widows', Orphans', and Old Age Contributory Pensions Act, 1925 (or "the Authority" empowered under L.P.A., 1925, s. 85, to modify or discharge restrictive covenants), whose duties may be described as almost purely judicial, but whose constitution may be described as mainly administrative. But even more important than any of these special tribunals are the departments of government, particularly the Ministries of Health, Labour and Transport, who perform an enormous amount of work of a judicial character. Their jurisdiction in some cases is appellate and in others summary. The most notable fact is that in all but a comparatively few cases there is no appeal to a regular judicial tribunal.

Have these administrative tribunals come to stay? Mr. Robson is definite in his answer to this question. The root cause of their growth he finds in the vast extension of state and municipal activities which have taken place during recent years. As long as these activities are maintained and possibly extended, and as long as the old individualistic conception of rights and duties continues to yield ground to the newer idea of "socialisation," special and administrative tribunals will have their role in speeding up and cheapening trials, relieving the ordinary courts of work of a "specialised" character and in particular in "liberalising" the general body of the law.

In fact, Mr. Robson's treatment of the causes of the development and of the advantages and disadvantages of the new administrative tribunals is really illuminating. He makes it clear that the advantages which such tribunals may have are more numerous than one would be prepared on first thoughts to admit, but he is careful also to point out their weaknesses. They adjudicate in an atmosphere "of mystery and secrecy" and fail "in most cases to give reasons for their decisions, or to publish reports of decided cases." In particular they may in the future be utilised for cutting "through our economic difficulties by handing over the disposal of economic controversies to official tribunals armed with plenary powers of decision and enforcement."

The problem arising from the growth of these special and administrative tribunals calls for a more thorough and widespread investigation by members of the legal profession than it has hitherto had. The tide cannot be turned back, but some control can be exercised over the direction in which it ought to flow.

There is no body of persons better qualified to exercise this control than that found in the two great branches of the legal profession. Steps could at this juncture with very great advantage be taken to institute a thorough investigation into the whole problem of adjudication and legislation by special tribunals and government departments.

*Published by Macmillan & Co. Ltd. 1928. xviii and 346 pp. 12s. 6d. net.

The Totalisator.

There are optimists who expect the Racecourse Betting Bill, introduced on the 10th February last, to become law, and it is just within the bounds of possibility that it will do so.

That Bill is purposely drawn in such a way as to effect a much greater revolution than the mere introduction of mechanical betting. It would take racecourses entirely out of the operation of the Betting Act, 1853, making of them sanctuaries in which no place would be a "place." Bookmakers could have definite pitches assigned to them by the proprietors of a racecourse "or adjacent ground," and no bookmaker whom those proprietors desired to exclude would be given such a recognised position.

The development is logical enough. The exception was made when the judges, with more ingenuity than regard for the Act, arrived at the famous Kempton Park decision. Since then racecourses have had an immunity, the ill effects of which are beginning to be felt acutely since the introduction of greyhound racing. As the writer of a letter in *The Times* of the 31st October said: "Betting on dogs is lawful provided it is conducted inconveniently."

In the same way betting on horses is lawful if done inconveniently. It is proposed now to remove the inconvenience. The racing correspondent of *The Times* is enthusiastic upon the projected change and all its potentialities. In articles of the 13th and 26th of February he develops the matter in a way which shows that he has expert knowledge of law as well as expert knowledge of horse flesh.

As he points out, even if no totalisators be erected, much will be altered. Bookmakers can be charged a fee for their stands, inspection of their books can be enforced, and "there will be no excuse if the enclosures for the general public are not conducted on the same lines as the members' lawns, free of the noise and turmoil which now make the rings quite impossible for ladies, and unpleasant to everyone."

The case against the change has yet to be developed in Parliament. Some will object to the statutory recognition of betting as anything but an activity to be repressed, its taxation even being regarded as a harmful admission by the State of the impracticability of repressing it. There will be, too, the argument that if a limited number of horse-racing grounds are to have the exemption, and only those controlled by the Jockey Club or the National Hunt Committee are concerned, there is no reason why all racing grounds should not have it too. This argument cannot, of course, be logically refuted. It has, indeed, a double edge. The greyhound racers who always urge that there should be no discrimination between the sport of the poor man and that of the wealthy, can use one edge of the weapon. The anti-greyhound racing people will see how much more difficult it will be to legislate for the abolition of dog-racing, a form of sport of which betting is the backbone, when betting on the larger animal is, by special legislation, removed from the scope of penal statutes aimed at the suppression of all betting.

We shall watch the progress of the Bill with great interest, and be exceedingly surprised if it emerges from Parliament as anything but the pale ghost of itself.

A Conveyancer's Diary.

Dealings with Equitable Interests: Notice.

Section 137 (1) of the L.P.A., 1925, extends the rule in *Dearle* v. *Hall*, 1823, 3 Rus. 1, which regulates the priority of competing interests in equitable things in action, to post-1925 dealings with equitable interests in land, capital money and securities representing capital money. Hence the priorities of competing interests created after 1925 and arising by assignments of equitable interests in land or capital money as well of all competing interests in equitable things in action, including the proceeds of sale of land held on trust for sale, now depend upon the date on which notice of the assignment is given to the estate owner or trustees.

Priorities acquired before 1926 are not affected: L.P.A., 1925, s. 137 (7).

The persons to be served with notice of equitable interests affecting land (except where the money or securities are in court) are:—

(1) in the case of settled land or capital money, the trustees of the settlement or the trustees of the sub-settlement, as the case may be;

(2) in the case of land held upon trust for sale, as respects the proceeds, the trustees for sale;

(3) in any other case, the estate owner of the land affected.

A question arises as to the form in which the notice should be given. Sub-section (3) enacts that "a notice otherwise than in writing given to or received by a trustee" after 1925 "as respects any dealing with an equitable interest in *real* or *personal* property shall not affect the priority of competing claims of *purchasers* in that equitable interest." And sub-s. (10) provides that s. 137 generally is not to apply "until a trust has been created."

Thus it seems that, where two or more purchasers are competing for priority in respect of *any* property vested in trustees, the purchaser who first gave written notice will obtain priority. The sub-section, by inference, appears to allow a notice, otherwise than in writing, to be treated as good for other purposes. Thus, a notice, which is not in writing, would, it seems, be sufficient to bind trustees proceeding to distribute property in their hands to persons other than purchasers; cf. T.A., 1925, s. 27 (2), relating to informal claims.

As s. 137 does not apply "until a trust has been created," notice such as that given in *Lloyd* v. *Banks*, 1868, 3 Ch. App. 491, will be sufficient where there are dealings with equitable things in action and a trust is deemed to have arisen: see also s. 205 (2) as to equitable interests arising by statute or operation of law. Interests in the proceeds of sale of land directed to be sold are treated as equitable interests in land: *ib.*, subs. (1) (x).

But L.P.A., 1925, s. 196, declares that "any notice required or authorised to be served or given" by that Act must be in writing. As s. 137 at least "authorises," if it does not "require," notice to be given so as to affect the priorities of competing equitable interests in land or capital money, it is conceived that all notices of dealings in such interests must be in writing.

Where for some reason (e.g., there are no trustees to whom notice can be given) a valid notice cannot be served, a purchaser may require notice to be endorsed on the instrument creating the trust: s. 137 (4).

It is also well to bear in mind that the due registration of any matter registrable under the L.C.A., 1925, is deemed to constitute actual notice of such matter "to all persons and for all purposes connected with the land affected": L.P.A., 1925, s. 198 (1).

In the circumstances the only safe course, in practice, will be to register all registrable matters; to endorse notice on the appropriate trust instruments where there is no trustee who can be served with a valid notice; and in all other cases to serve a written notice on the legal owner of chattels or things in action or the S.L.A. trustees or estate owners of land.

"Trust Corporation."

For the purposes of the L.P.A., 1925, S.L.A., 1925, T.A., 1925, and the A.E.A., 1925, a "trust corporation" includes, amongst other persons, "a corporation . . . appointed by the court in any particular case to be a trustee." The definition clearly contemplates the creation of a trust corporation *ad hoc* by the court appointing a corporation (not already a "trust corporation") to be a trustee in a particular case. When so appointed the corporation, though acting as sole trustee, can give a valid receipt. There seems to be no statutory restriction on the exercise by the court of this power to appoint a corporation, and thereby making it a "trust corporation." But the court will only appoint "a fit and proper person" to be a trustee, and no doubt, when appointing a corporation to act as sole trustee, regard will be had to the fact that the privilege of giving sole receipts is being at the same time conferred on the appointee.

Landlord and Tenant Notebook.

Tenant Holding over: Acceptance of Rent.

The position of a tenant, who holds over after the expiration of his original term, is a question which one is constantly being called upon in practice to determine.

It is commonly said that a tenant who holds over after the termination of his tenancy, holds over as a tenant on sufferance, until rent is paid by and accepted from him. This seems, however, too wide a statement of the law, and there must undoubtedly be cases where such holding over must necessarily constitute the ex-tenant a trespasser and not a tenant on sufferance. Thus, if the landlord, whether or not in pursuance of a power contained in the lease, advised the tenant that his term was about to expire, and that possession of the premises would be required from him, on the date of the expiry of the term, the tenant, it is submitted, would clearly be a trespasser by holding over. But there may be cases, on the other hand, where the term runs out, and no step is taken by the landlord, whether prior or subsequently to the expiry of the term,

indicating a clear intention that the tenant must quit, and in such cases the tenant might lawfully hold over and continue in possession as a tenant on sufferance.

Another important question arises in such cases, viz., as to what is the effect of payment of rent by a tenant who is holding over and the acceptance thereof by the landlord?

An error into which not a few persons are liable to fall is that such payment and acceptance of rent, *ipso facto*, constitute the tenant holding over a tenant from year to year upon the same terms and conditions as those contained in the previous tenancy so far as they are not inconsistent with the new tenancy created by implication of law.

The position of a tenant holding over will be found well stated in the judgment of *Mayor of Thetford* v. *Tyler*, 1845, 8 Q.B. 95. Thus WIGHTMAN, J., said (*ib.*, at p. 101): "Where a party is allowed to hold after the expiration of a tenancy by agreement, the terms on which he continues to occupy are matter of evidence rather than of law. If there is nothing to show a different understanding, he will be considered to hold on the former terms." But if there is evidence to the contrary, then the person holding over may be regarded as holding under terms, which may be materially different from those applying to the former tenancy. Thus he may hold over at a different rent (as in *Mayor of Thetford* v. *Tyler*), or under different covenants.

And indeed as the matter is one of evidence rather than of law, the holding over may not be as a tenant at all. Thus if rent is received in respect of a period subsequent to the determination of a lease, in ignorance of the fact that the lease had already come to an end, no yearly or other tenancy will be created thereby, and the landlord would notwithstanding be entitled to possession (cf. *Doe d. Lord* v. *Crago*, 1848, 6 C.B. 90). Thus, in the above case of *Doe d. Lord* v. *Crago*, WILDE, C.J., in delivering the judgment of the court, said: "It is clear that upon proof of the payment of rent in respect of the occupation of premises ordinarily let from year to year, the law will imply that the party making such payments holds under a tenancy from year to year; and it was so ruled in *Bishop* v. *Howard*, 2 B. & C. 100. But it is equally clear that it is competent to either the receiver or the payee of such rent to prove the circumstances under which the payments as for rent were so made, and by such circumstances to repel the legal implication which would result from the receipt of rent unexplained." The question, which is one of fact for determination by the judge or jury, as the case may be, is whether the landlord, at the time of the receipt of the rent, was or was not under the impression that the premises were being occupied "as under the old lease, in ignorance of its determination." If the landlord was under any such mistaken impression, no tenancy would be created; but if he were not, then a new tenancy agreement would be implied in law.

Our County Court Letter.

PEACEABLE RE-ENTRY.

The tenant has for so long occupied a sacrosanct position that the landlord's common law rights now cause surprise when exercised. In a recent case the facts were as follows: The tenant of a decontrolled house had received notice to quit, but (as often happens) was unable to find other accommodation. The landlord thereupon said: "I will give you £5 if you are out in a fortnight." This having been said four days before the expiry of the notice to quit, was taken by the tenant to be an agreement to extend the notice to quit for ten days. He therefore took no steps to store his furniture, but remained in possession while still looking for other accommodation. During the absence of the tenant and his family, the landlord (after the notice to quit had expired) unfastened the door, removed all the tenant's furniture into the yard, and resumed possession. The tenant, having incurred expense in storing his furniture and obtaining lodgings for himself and his family, sued the landlord for breach of contract and trespass. The claim was for £50 general damages and the items of expenditure as special damage. The judge held that there was no consideration for the alleged agreement to extend the notice to quit, the £5 being payable (if at all) by the landlord. If the *tenant* had offered £5 to be allowed to remain the further ten days, he might have had a claim for breach of contract.

It was also held that there was no fresh tenancy, as again there was no consideration moving from the tenant, and there was no agreement to pay rent from day to day at the previous weekly rate. Further, a tenancy from a future date is a contract for a lease, and must be in writing under the L.P. Act, 1925, s. 40, replacing (in part) the Statute of Frauds, s. 4.

The tenant was also unsuccessful in the claim for trespass, as to which certain old cases are still of good authority. In *Turner* v. *Meymott*, 1823, 1 Bing. 158, a weekly tenant held over after the expiration of the notice to quit, and the landlord (while no one was in the house) broke open the door with a crowbar and re-entered. The tenant sued for trespass and obtained a verdict, but the Court of Common Pleas ordered a new trial on the ground that the law allowed the landlord thus forcibly to reinstate himself. In *Hemmings and wife* v. *The Stoke Poges Golf Club*, 1920, 1 K.B. 720; 64 SOL. J. 131, the plaintiffs had lived in a cottage belonging to the defendants, the man being in their service and occupying the cottage for the performance of his duties. On leaving their service, and after a valid notice to quit, he refused to give up possession. Thereupon, by order of the defendants, their estate agent attended with four men, and in the presence of a constable entered the cottage and removed the plaintiffs and their furniture, using no more force than was necessary for the purpose. Mr. Justice Peterson, sitting as an additional judge of the King's Bench Division, awarded the plaintiffs twenty guineas damages for trespass, assault and battery. The Court of Appeal (Lords Justices Bankes and Scrutton and Lord Merrivale—then Lord Justice Duke) reversed this decision, and overruled three cases on which it was based. The court decided that a trespasser in possession of land cannot recover damages against the person entitled to possession, either for trespass, etc., or under the Statute of Forcible Entry, 1391 (5 Richard II, stat. 1, c. 7)—provided that no more force is used than is necessary to remove the trespasser, and proper care is taken in the removal of his goods. While a right of entry is a defence to civil proceedings, the landlord may expose himself to the risk of an indictment under the above statute, which provides that none make any entry with strong hand, nor with multitude of people, but only in peaceable and easy manner.

Forfeiture of a lease may also be an occasion on which the landlord may exercise his remedy of peaceable re-entry, but in that event relief may be given to the tenant under the Law of Property Act, 1925, s. 146, as in the case of enforcement of a right of re-entry by action. It was decided in *In re Riggs*, 1901, 2 K.B. 16, that the statutory notice also is necessary before the lessor can obtain possession either by action or peaceably. In that case a lease contained a covenant not to assign without licence, and a proviso for re-entry on bankruptcy of the lessee or breach of covenant. The lessee having been adjudicated bankrupt on his own petition, the lessor purported to determine the lease, and obtained peaceable possession from the lessee. The lease was valuable, and Mr. Justice Wright held (1) that the re-entry was void against the trustee in bankruptcy in the absence of the above notice; and (2) that the lessee being adjudicated bankrupt on his own petition did not operate as a breach of his covenant not to assign.

Practice Notes.

DIVORCE.

No branch of the law exhibits greater inequality in treatment of the sexes than the Divorce Law.

An instance of this is the very different positions in which a co-respondent and a "woman named" are placed respectively. A co-respondent can be mulcted in damages in the ordinary course for the injury that he has done to the home, but a female paramour can only be made to pay compensation by means of an action at common law for enticing the husband away and depriving the wife of his consortium, as was done apparently for the first time in England in 1923 in *Gray* v. *Gee*, 39 T.L.R. 429.

Again, a co-respondent is liable for the costs of the petition on proof of his knowledge that the respondent was a married woman. No special prayer to that end is even needed in the petition. Until recently a wife petitioner wanting the above relief against a woman named had to apply on summons to the judge to make the woman a respondent, as was done in *Pepper* v. *Pepper and Baker*, 1926, W.N. 282, but since that case the President of the Division has directed that where a petitioner has asked in the prayer to her petition for costs against the named woman, the effect will be automatically to make the woman a respondent to the suit.

Although the married woman may intervene, she is not a party to the suit either until she has done so or she has been made a party by the inclusion of a prayer for costs against her in the petition, and the fact that she is not a party sometimes entirely prevents the exposure of her adultery. For instance, a verbal admission of adultery with the husband, if not made in his presence, cannot be used as evidence.

It happens also in many cases that the woman who has committed adultery escapes being named at all. The provisions governing proceedings against an unknown male adulterer are much more strict than those dealing with an unknown woman. Before proceeding with a petition against an unknown male, the leave of the court to dispense with making the alleged adulterer a co-respondent must be obtained. This is by summons, supported by affidavits of petitioner and the solicitor or other person conducting the inquiry stating that the man's name and identity are indiscoverable.

In the case of a female adulteress the matter can proceed upon the bare statement in the petition that the woman is unknown, supported by the undetailed affidavit verifying the petition made by the petitioner.

The only "sanction," upon the other hand, of the petitioner who does not name the woman when she might is that if it appears at the hearing that the woman's identity really is known, the court may stay the petition with suitable comment for delivery of a copy of the pleadings upon the woman then identified with a notice that she may apply for leave to intervene.

INCOME TAX.

Of the numerous forms relating to the income tax, Form 185 is the form which most often comes into the hands of solicitors, and a reader has requested some information on the question of solicitors being allowed to sign the form on behalf of clients and the acceptance of this practice by the Revenue authorities. During the past two or three years the form of certificate of deduction of income tax has specifically stated that the signature must be by the person deducting the tax and responsible to account for such tax to the Revenue. It is definitely stated that the signature of the claimant's solicitor or other agent is not sufficient. As in so many other instances, the practice in this matter varies in different parts of the country. In most districts Inspectors of Taxes raise no question when a solicitor signs the certificate relating to an annual payment of ground rent, but when the annual payment takes the form of interest on mortgage or loan, or of an annuity, such a signature is not accepted. The reason for this is not far to seek. The wording of the certificate is as follows: "I certify that on paying to . . . of . . . the sum mentioned in the third column of the subjoined statement, I deducted the amount of income tax shown in the fourth column of the statement, and I further certify that this tax has been or will be paid by me either personally to the proper officer for the receipt of taxes or by way of deduction from rent or other income when received by me." It will be seen that the form of certificate is personal to the person paying the interest, and in its present form could not be completed by another. The reason why the form of certificate is not altered so that an agent could complete it is because the Revenue authorities then might be unable to trace assessments on the person on whose behalf the payment was made in order to ascertain that the amount of interest and so forth was covered by assessment. It frequently happens that, even in the case of mortgage interest, the annual payment is not retained against the Sched. A assessment on the property on which the mortgage is secured. All these Forms 185 are checked against covering assessments by the authorities before the certificates are accepted in connexion with claims for repayment and, if they were signed by persons other than those whose duty it was to account to the Revenue for the tax deducted, it would be a very difficult matter to verify that the tax deducted was accounted for.

Obituary.

MR. THOMAS M. GREER, M.A.

Mr. Thomas MacGregor Greer, Solicitor (Dublin), died on Sunday, the 19th ult., at Bournemouth, in his seventy-fifth year. Born on the 31st January, 1853, he was educated at Coleraine and Trinity College, Dublin, where he graduated. He was the eldest son of the late Mr. Samuel McCurdy Greer, Q.C., a prominent member of the Irish Bar, who was, at one time, M.P. for County Derry, and Recorder of Londonderry, and for a long period after, County Court Judge of Cavan and Leitrim. Admitted in 1876, he opened offices at Ballymoney, and soon built up an extensive practice. Being joined by Mr. J. B. Hamilton twenty years later, he established what afterwards became one of the best known firms of solicitors in Northern Ireland, but he retired from practice in 1920. He formerly represented Ulster on the Council of the Incorporated Law Society of Ireland, was Convener of the Tenures and Trusts Committee of the General Assembly of the Irish Presbyterian Church, and for over twenty years acted as Solicitor for the Antrim County Council. He was elected a member of the Senate of the first Parliament of Northern Ireland, which he represented on "The Council for Ireland," set up in accordance with the Government of Ireland Act. His only son, Lieut. Kenneth Greer, Irish Guards, was killed on the Somme in 1916. H.

Books Received.

Income Tax, Super Tax and Sur-Tax. The New Law Explained. VICTOR WALTON, F.I.C.A. Cloth boards, large crown 8vo. pp. xviii and 219 (with Index). 1928. Sir Isaac Pitman and Sons, Ltd., Parker-street, Kingsway, W.C.2, Bath, Melbourne, Toronto, New York. 7s. 6d. net.

Tax Cases. Reported under the direction of the Board of Inland Revenue. Vol. XII, Part XII. 1928. H.M. Stationery Office. 1s. net.

The Arbitrator, the Journal of the Institute of Arbitrators Incorporated. Vol. I. New Series. February, 1928. No. 3. The Institute of Arbitrators, 28 Bedford-square, W.C.1. 1s. net.

POINTS IN PRACTICE.

Questions from Registered Annual Subscribers are invited and will be answered by some of the most eminent authorities of the day. All questions should be addressed to—The Assistant Editor, "The Solicitors' Journal," 29, Breams Buildings, E.C.4, be typewritten on one side of paper only, and be in duplicate. Each copy to contain the name and address of the subscriber. To meet the conveniences of Subscribers, in matters requiring urgent attention, answers will be forwarded by post if a stamped addressed envelope is enclosed.

Settled Land—Settled by Deed—No Trustees—Sale—Procedure.

Q. 1159. In 1885 A (in consideration of the intended marriage of his daughter, B, and with the privity of the intended husband, C) as settlor conveyed certain freeholds to B, "to hold the same unto B in fee simple to the use of A in fee simple" until the marriage, and thereafter to the use of B during her life, and after her death to the use of C until he should marry or die or alienate his estate or interest, and "subject as aforesaid to such uses upon such trusts and with and subject to such powers and provisions as B whether covert or discovert should by deed revocable, etc., or will appoint and in default of such appointment to the use of B's children as tenants in common in tail with cross remainders in tail and in default of issue to the use of the persons who would have taken if B had died seised for an absolute estate in fee simple and intestate." The marriage took place, and B and C are both living with the only issue, two daughters, both under forty years of age, and unmarried. B and C, before 1926, sold part of the property. They have now contracted to sell the remainder.

(*a*) Has B such a legal estate as will enable her to convey to the purchaser with or without C's concurrence? If not—

(*b*) Can she settle the property under s. 21 of the S.L.A., 1925, with trustees appointed by the court or a trust corporation? Or—

(*c*) Can she create a settlement or trust for sale *ad hoc* under the L.P.A., 1925, as amended? Or—

(*d*) By what other means can she convey?

A. (*a*) Yes, B is tenant for life under the S.L.A., 1925, and can sell as such without C's concurrence.

(*b*) (*c*) and (*d*) do not arise. The difficulty as to the absence of trustees for the purposes of the Act must, however, be met. Since B has a general power of appointment subject to C's limited life interest—a somewhat unusual form of settlement—she can appoint in favour of herself or her daughters, and then she and C and the appointee or appointees can appoint trustees under s. 30 (1) (v). These trustees will then execute a vesting deed under the 2nd Sched., para. 1 (2), and B will convey, the trustees receiving the purchase-money in the ordinary way.

Moneylenders Act, 1927—Promissory Note—Memorandum in Writing.

Q. 1160. The majority of transactions by moneylenders are carried out by means of the borrower giving a promissory note. Assuming that the promissory note contains all the terms of the loan contract, and, in particular, complies with the requirements of s. 6 (2) of the Moneylenders Act, 1927, is it correct to regard such promissory note as a "security" for the loan, and thus (perhaps) render it necessary for the borrower to sign a separate and distinct document to constitute the "note or memorandum in writing of the contract" required by that section, or is the promissory note itself such a note or memorandum?

(2) If a moneylender effects a transaction by means of a promissory note through the post he, naturally, obtains the signature of the borrower to the promissory note, and (if necessary) the separate "note or memorandum" before sending on the loan. How can he, in such circumstances, comply with the provision that the "note or memorandum in writing" must show (*inter alia*) the date of the loan? The only method, apparently, is to leave the date blank when the document is signed and ask the borrower to trust him to insert the true date of the loan upon the money being remitted to the borrower.

A. (1) This question is one of great practical importance, and one upon which much doubt, in the absence of any decision under s. 6 of the Moneylenders Act, 1927, exists. It appears to be reasonably clear in view of the observations of the Court of Appeal in *Sterling* v. *John*, 1923, 1 K.B., at p. 561, that a promissory note is a security. In that case Lord Sterndale, M.R. (dealing with the case of a money-lending transaction which involved the loan of money and the taking of the lender of a promissory note, and also of eight post-dated cheques, and raised the question whether the taking of the cheques was the taking of "a security for money" within s. 2 (1) of the Act of 1900) observed: "The question is, were they [i.e., the cheques] securities for money? . . . The meaning of the word 'securities' is not confined to a document which gives a charge upon specific property. *Undoubtedly the promissory note was a security for money* and the cheques seem to me to stand on the same footing." It appears therefore to be reasonably clear that in the case put the promissory note is a security, and if that be so, quite apart from difficulties that may arise under the Stamp Act, 1891, it is at least dangerous to make the document constituting the security also perform the functions of a note or memorandum of the contract because in such a case it would probably be extremely difficult to maintain that the memorandum was signed before the security was given, both being the same document, and therefore of necessity signed at the same time. It is true that it might be argued that this Act does not require the memorandum to be signed before the security is "signed," but only requires it to be signed before the security is "given," and that accordingly if the borrower signs the note as a memorandum and later hands it on it might be argued that the delivery constitutes the "giving." The same argument would apply, however, to any other security save that a distinction might arise between a security that was not in form or deed, and one that was delivery in the later case being an essential to the perfecting of the document. In all the circumstances, and especially in view of the fact that the memorandum must contain all the terms, one of which is that in the case put a "security" is to be given, it would certainly appear to be very dangerous to cast the memorandum in the form of a promissory note, for if it were held that the promissory note was "given" when it was signed; or if it were held that as a term in the contract of repayment was that a security in the form of a promissory note was to be given, such term must appear in the document; or if it were held that the memorandum required stamping as such and the promissory note required stamping as such, and the one document being only stamped as a promissory note, could not be put in evidence as a memorandum, then in all such cases it would seem highly probable that it would also be held that there was not a sufficient memorandum proved to have been signed before the security was given. From which it would follow that neither the contract of repayment nor the security, i.e., the promissory note, could be enforced, and the result would be that the money-lender would apparently be without any means of recovering the money advanced. In such circumstances it would ordinarily be advisable, until a definite ruling has been obtained to the contrary, to avoid such a danger by making the memorandum separate from the note and in practice it

might well be found that the giving of promissory notes in this kind of transaction may cease to have any advantage, for the contract evidenced, as it must now be, in writing, can be sued upon. The quality of negotiability is in practice of little advantage in money-lending transactions, and is made less so now under the provisions of the Act relating to assignments. It is observed that the forms issued by the Law Stationery Society appear to be settled in accordance with the view above expressed, and that the new County Court (No. 2) Rules, 1927, appear to assume that the "contract" is the same as the "memorandum" referred to in s. 6 of the 1927 Act, for r. 5A (*b*) to Ord. VI requires the money-lender claimant to state in his particulars of demand when suing in the county court on a money-lending contract, "the date when a copy of the contract was delivered or sent to the borrower." This can only have reference to the provisions of the 1927 Act, which requires a copy of the emmorandum to be sent to the borrower.

(2) The difficulty which appears to be felt here by the questioner seems to involve a confusion of thought. The memorandum is a memorandum of repayment and is a document which must contain all the terms of the contract of repayment of a loan. It must in all cases be signed before the advance is made, though obviously not before the contract of loan is made. This is so whether the transaction is by post or otherwise. Although, doubtless, in practice the memorandum will be prepared by the lender, and will be more or less in common form, it is a document that the borrower personally alone is required to sign, and when he signs it it must contain all the terms, and in particular "the date on which the loan is made." Section 6 (2) of the Moneylenders Act, 1927. If, therefore, the borrower signed it with that term left out, or with other terms of the contract left out, the borrower clearly would not have signed a sufficient memorandum. Although the wording quoted is not very happy, and it would seem that "the date on which the loan is to be made" would be more apt, the intention of the Act is reasonably plain, and is this: One term in the contract relates to the date on which the loan is made. A may agree to-day with X that X will advance next week money, and A will repay that money at such times and in such amounts as may be agreed. To-day A can draw up and sign a memorandum setting out these terms. In that memorandum the date the loan is made will be whatever date has been agreed for the advance to be made. If on that date the advance is not made the contract is broken by B.

Sole Personal Representative—TITLE.

Q. 1161. A.B. made his will on the 12th December 1925, in the following terms:—"I give the whole of my property both real and personal to my wife L.B. for her life or widowhood and at her death or re-marriage the whole of my estate to be divided between my eight children as follows" and then testator set out the children's shares, and appointed C.D. his executor. The testator died on the 15th December 1925, and his will was duly proved by the sole executor on the 13th January, 1927. It is now desired to sell a freehold house forming part of the testator's estate.

(1) Can the sole executor sell as personal representative? There is a mortgage on the property which was created by the testator and is still existing.

(2) If not and the sale must be carried out through the machinery of the S.L.A., what steps must be taken?

A. (1) Yes. Ad. of E.A., 1925, s. 39 (1), which gives personal representatives "for the purposes of administration" the powers of trustees for sale. A purchaser of the legal estate is not concerned even if he has notice that all the liabilities have been discharged: *ib.*, s. 36 (8). Other protection to such a purchaser is given by other sub-sections of the same section, and in particular by s. 37. Section 39 (1) applies, whether the testator "died before or after the commencement of the Ad. of E.A., 1925": *ib.*, sub-s. (3). A sole personal representative can give a valid receipt: L.P.A., 1925, s. 27 (2).

(2) This does not arise. See note in 2 Wolst. & Cherry, p. 542 ("Purchaser of legal estate can deal safely with representatives").

Partnership Property Conveyed as such before 1926—TITLE.

Q. 1162. By a deed, dated in 1915, freehold property was conveyed to seven persons, partners in the firm of A. & Co., the habendum reading as follows:—"To hold unto [the seven partners] their heirs and assigns during the life of the longest liver of the now living descendants or issue of Her late Majesty Queen Victoria and during the period of 20 years next after the death of such longest liver To the use of [the seven partners] and the Members for the time being of the firm of A. & Co. by whatever name the said firm may from time to time be known while respectively remaining such Members And after the expiration of the said period of 20 years To the Use of the then existing Members of the said firm their heirs and assigns as joint tenants." The deed contains a power for the members for the time being of the firm to sell, mortgage, lease or otherwise dispose of the land and appoints the seven partners, naming them, and the members for the time being of the said firm to be trustees for all the purposes of the S.L. Acts. At the commencement of the L.P. Acts the members of the firm were the seven persons to whom the land was conveyed and one other. The name of the firm had been changed. In whom did the legal estate in the land vest (*a*) immediately prior to, and (*b*) immediately after the commencement of the L.P.A., and who can now make title to the land, having regard to the provisions of the L.P.A. and S.L.A.?

A. The question whether partners taking as such were to be regarded at law as joint tenants or tenants in common, is discussed in the answers to *QQ.* 740, 762 and 869, pp. 304, 348 and 602–3, and reference will show it is not easy to solve. It was of no particular importance before 1926, because they were always tenants in common in equity, but the issue is now important because of the transitional provisions in the L.P.A., 1925. Here there is a somewhat elaborate use, which might be construed, in the event which has happened, "to the use of the seven partners until another member of the firm is constituted, and, on that event, to the use of the seven partners and that other member of the firm" etc. That would be a springing or a shifting use which, when the eighth member was added, gave the legal estate to the eighth jointly, but subject to equities amongst themselves in accordance with the partnership deed. If there was a joint tenancy on 31st December, 1925, the eight would hold on trust for sale under the L.P.A., 1925, s. 36, and if a tenancy in common the same result would ensure under the 1st Sched., Pt. IV, para. 1 (1). The opinion is, therefore, given that the eight partners can make title accordingly. The land was and is not settled land if, as presumably is the case, the eight partners are sole owners and all take present interests. The fact that the firm name has been changed should be recited in conveyance to show that the eighth person took.

Settled Land—DEVISE FOR LIFE OR DURING RESIDENCE—TERMINATION OF SETTLEMENT BY NON-RESIDENCE—SALE.

Q. 1163. A testator devised his freehold house unto his wife until she should die or cease to make the same her usual residence, and from and after her death or ceasing to make the same her usual residence testator declared that the same premises should fall into and form part of his residuary estate. He devised his residuary estate unto his trustees upon trust for sale. Testator died in 1916 and the will was proved in the same year. The widow continued to reside in deceased's residence until about five months ago, when she let the house and went abroad. She has now returned from abroad but has not gone back to the house, which has been sold by auction. No vesting deed has been executed. Seeing that she has

ceased to make the house her usual residence, is it necessary to execute a vesting deed in her favour so that she can convey as tenant for life, or can the trustees sell under their trust for sale ?

A. On the assumption that the testator's estate had been administered before 1926, the legal estate in the premises vested in the widow as tenant-for-life estate owner by virtue of L.P.A., 1925, 1st Sch., Pt. II, paras. 3, 5, 6 (*c*). If she has decided not to reside in the house—her conduct is strong evidence of this—the settlement, as respects the house, has come to an end (a purchaser will want satisfactory evidence of this); and she is no longer entitled to have a vesting deed executed in her favour. On the contrary, the trustees for sale can call for a conveyance of the property to themselves under S.L.A., s. 7 (5) and then make title as trustees for sale. No capital money will arise and so S.L.A. trustees need not be parties.

Representation—Death of Executor before Probate—Assent.

Q. 1164. A testatrix E died in 1908, having by her will appointed her husband K sole executor, and devised all her property, including a house and shop occupied by her husband to him. K died in 1927, without having taken out probate, and having made a will leaving all his estate to his son H and appointed him and another executors thereof. It is proposed that the executors of K should assent to the devise to H, but we are not quite clear whether an assent is required for the devise by E to K. As he never proved the will he cannot be presumed to have assented to this devise, although he actually occupied the property after her death. If an assent is necessary it would apparently now have to be made to K's executors, K being dead ?

A. It seems that the executors of K could assent to the vesting in H, but unless and until representation to E is obtained there would be no evidence of the title of K to the property: see *Brazier* v. *Hudson*, 1836, 8 Sim. 67. The best plan then is to apply for a grant, and for such administrators to assent to the executors of K, who would then assent to H. Or they could at the request of the executors of K assent directly to H.

Pre-1927 Adoption of Infant—Rights of Adopters.

Q. 1165. A and B (husband and wife) had three children. A was called up during the war and sent to Palestine, where he remained for three years without returning home, or having any opportunity of seeing his wife. He returned home discharged in 1919, and found his wife had a child only a few weeks old. He was informed of the putative father of the child (a girl), and went to the putative father's house intending to kill him. But on seeing the putative father was a great cripple, A's gun and bayonet fell from his hand and he straightaway left the house. For a time A left his wife, but ultimately, particularly for the sake of the three children, agreed to return to his wife if the new-born child were entirely got rid of by adoption. The child was subsequently adopted by C and D (husband and wife) in 1919, under an adoption agreement with the mother of the child, which agreement included terms that the mother would not in anyway interfere with or claim the child, nor seek to discover its whereabouts, etc. The child has since remained with C and D unmolested, and is now eight years old. From certain little things seen and heard it is feared that the mother and even the putative father may attempt to regain possession of the child.

(1) Has the putative father any claim or right whatsoever to the child ? If he did anything of the kind suggested, could proceedings be taken against him, and the child restored to C and D ?

(2) Has the mother any right or claim to the child. It seems unlikely that the mother will take steps to reclaim the child, as her husband B (one would imagine) would have the same objection now to having the child in his family as he had at first, unless something has taken place between them in the interval, such as B leaving A, etc., as to which there is no information ?

(3) Can any steps be taken by C and D to prevent the child being taken from them ?

(4) What course do you advise C and D to take ?

The child has no suspicion that C and D are not its father and mother. The child is a bonny, well-favoured and healthy child, and devoted to its foster-father and mother, as also they to her.

A. (1) The putative father, whether making payments under an affiliation order or otherwise, has no right to the custody of the child against a person to whom the mother has delivered her.

(2), (3) and (4) There is an initial difficulty that the child is *primâ facie* legitimate, though the courts would find otherwise on the facts being proved. Assuming that this could be done through evidence of War Office records, etc., the situation resembles that considered in *Barnardo* v. *McHugh*, 1891, A.C. 388, the court also being bound by the provisions of the custody of Children Act, 1891, and the Guardianship of Infants Act, 1925, s. 1. Strictly, of course, the mother of an illegitimate child cannot transfer her rights: see *Humphreys* v. *Polak*, 1901, 2 K.B. 385. All the above authorities and statutes, however, show that the court has a paramount power in the interests of the child, and if in any proceedings the story told above is properly established by evidence, the court would probably regard C and D as the best custodians and order accordingly. If they have a well-founded apprehension that the mother will try to regain the child, perhaps they might wisely take the first step in asking for an adoption order under the Adoption of Children Act, 1926, relying on the proviso to s. 2 (3) for dispensing with the mother's consent. And if her husband testified that he still objected to the child's presence in his house, this would be an important factor in their favour. In the absence of an affiliation order, probably the putative father's wishes would be disregarded, if not otherwise.

The child being attached to her adopters, *R.* v. *Walker*, 1912, 28 T.L.R. 342, may also be cited as a helpful decision if the illegitimacy is established, though it is somewhat difficult to see how this could be done in proceedings for the ostensible benefit of the child. The husband could not so testify, see *Russell* v *Russell*, 1924, A.C. 687.

Pre-1926 Restrictive Covenants—Purchaser's Notice.

Q. 1166. On the 5th April, 1923, A purchased a piece of land from an urban district council who were selling under the Private Streets Works Acts, the original owner having made default in payment of his share of the charges for making up the road upon which the land abutted. The land was held by the original owner subject to a covenant that no shop of any description should be erected on any plot. The actual wording of the covenant is as follows: "And the purchaser doth hereby for himself his heirs, executors, administrators and assigns covenant with the Vendor his heirs and assigns . . . that no shop of any description shall be erected on any plot." Both A and his solicitor are local people, and though, of course, they have never seen the actual conveyance to the original owner, they know perfectly well that the land was so restricted. A's successor in title, who is equally conversant with the facts, now wants to open a shop on the land. Do not the covenants run with the land, and is it not still restricted by the original covenant, notwithstanding that the council sold it free from restrictions ?

A. The answer is in the affirmative if the covenants were entered into within forty years of A's purchase, see *re Nisbet and Pott's Contract*, 1906, 1 Ch. 386.

Dower—Death of Doweress—Title.

Q. 1167. A purchased certain freehold property in 1893. He died in September, 1898, intestate, leaving his widow and one son his heir-at-law only him surviving. Letters of

administration to the estate of A were granted to the widow. The widow died intestate in 1924. A's son now wishes to sell the property. Can he sell as beneficial owner, or will it be necessary for letters of administration to be taken out to the unadministered estate of A ?

A. The view here taken is that advanced in "A Conveyancer's Diary" on pp. 723-724, *supra*, namely, that the land in the case mentioned was not settled land, of which the deceased widow was tenant for life. Hence the legal estate therein was not vested in the widow as tenant for life, and no representation to her estate need therefore be applied for. Even though no conveyance seems to have been made by the widow as administratrix to the heir, pursuant to L.T.A., 1897, Pt. I, the legal estate in the property became vested in the heir by virtue of L.P.A., 1925, 1st Sch., Pt. II (on the assumption warranted on the facts given), that A's estate had been completely administered before 1st January, 1926.

Interference with Water Supply.

Q. 1168. A and B are the owners of two adjoining houses which are supplied with water from the main by a joint service pipe which passes under A's house and thence into B's house. A cut the service pipe and sealed it up and so cut off the supply from B's house. The water undertakers prosecuted A under s. 19 of the Waterworks Clauses Act, 1863 "for unlawfully making an alteration in a service pipe at premises supplied with water by the undertakers." A was convicted by the justices and fined 20s. The undertakers have now approached A to restore the supply to B, and for this purpose have even attended at A's house to make good the reparation themselves. A denies them admittance and B is still without a water supply. From an engineering point of view it would be possible to connect B's house direct with the water main. It would appear that the service pipe so far as it is in A's house is the property of A. It is now desired to restore B's water supply, and at the same time make A bear the cost of the work. There do not appear to be any private Acts of Parliament dealing with the matter, nor can any other statute be found which solves the difficulty. Will you kindly inform us: (*a*) whether there is any statutory authority whereby the undertakers may break into A's house and restore the connection and charge A for the work done; (*b*) whether there is any statutory authority whereby A can be charged with the expenses of connecting B's house direct with the main.

A. The simplest and quickest way of bringing A to his senses would be an action by B for an injunction to restrain A from interference with his water supply, with probably a mandatory injunction to restore the connection, and a claim for damages. The matter should be placed before counsel at once, and he will no doubt be able to obtain an *ex parte* interim injunction from any Chancery judge assigned. The cost of operations to restore, whether carried out by the undertakers or otherwise, will be recoverable as damages, and the opinion is given that A would have to pay the cost of any temporary connection made for B's interim supply of water. If he, A, chooses to disobey the injunction, he can of course be committed to prison on appropriate proceedings. The answer to the first question asked is in the negative (unless possibly the state of B's house without the water supply has become a danger to health, when the local sanitary authority might exercise its powers) and the second is not answered in view of a different course being recommended.

Correspondence.

Judicial Separation or Divorce.

Sir,—On reading your leading article on the above subject, in which you approve of the strictures passed by Mr. Justice Hill on the alleged defect in our divorce laws, and suggest that the wife's action in the case referred to arose from conjugal jealousy and revenge, I beg to suggest to you that both you and Mr. Justice Hill overlook one or two important considerations.

It seems to me that you do not attach sufficient importance to the position of the injured wife, whose husband has left her for another woman. You express great sympathy with the latter because she is not permitted to marry her partner in guilt. May I put to you two questions:—

(1) Would you compel an injured wife to bring an action for divorce (at considerable expense) in order that her husband might be free to marry again ?

(2) If the injured wife refused to take this action, would you permit the guilty parties to obtain the divorce, in order to enable them to marry ?

Unless you are prepared to answer both these questions in the affirmative, it seems to me that the alleged defect in our divorce laws is non-existent and that the strictures of the judge are without justification. W. R.

[We did not intend, nor do we think was it the intention of Mr. Justice Hill, to suggest that in such cases an injured wife should be compelled to institute proceedings for a divorce, and that in the event of her failing to do so it should be open to the guilty husband to take action himself, nor would any such alteration of the law be desirable. That the wife should be compelled to take proceedings would be tantamount to compelling an aggrieved person *in invitum* to set the law in motion in order to enforce her rights; and to suggest indeed that a guilty husband should be entitled to take proceedings in such circumstances would seem to amount to the suggestion of a departure from the well-established maxim, *Ex turpi causa non oritur actio.*

Our contention is that it is not only an abuse of the process of the court for a wife to take proceedings for a judicial separation in such cases, but also that once the court has, as it were, seisin of the matter, by reason of the action taken by the wife in instituting such proceedings, then the court should have a discretion, on a consideration of all the facts, if it is of opinion that it is more in the public interest and to the interest of the parties themselves, that a divorce instead of a judicial separation should be granted, to grant a divorce instead.—ED., *Sol. J.*]

LAW AND PUBLIC MORALS.

Mr. Justice Roche, at the Salop Assizes, on Tuesday last, said he found from personal inquiries that only about 50 per cent. of offences against girls between the ages of thirteen and sixteen were reported to the police. He drew from that the moral that the law as it stood was rather ahead than behind average public opinion. The reason many people did not inform with regard to such offences was because of considerations of family honour and respectability.

Many well-intentioned persons sought to make the law more severe and for raising the age of consent, but in his opinion morality would not be advanced by that method. The true method was by senior masters and mistresses in schools, and by other means, teaching girls what self-respect demanded, and boys what self-restraint should dictate.

JUDGE ON IGNORANCE OF THE PUBLIC.

Judge Turner at Westminster County Court last Monday, said that the ignorance of people about the functions of a county court judge was very great. He had been asked about prison and hanging, and had replied that he hanged about as many as a Chancery Division judge and sent a good many more to prison.

NOTES OF CASES.

Privy Council.

(Present: Lords Haldane, Shaw and Carson.)

Universal Negro Improvement Association *v.* **Morter.**

24th February.

WILL—BEQUEST TO ASSOCIATION—ALLEGED REVOLUTIONARY OBJECTS—ILLEGALITY—PUBLIC POLICY.

This was an appeal from the Supreme Court of British Honduras, dealing with the testamentary gift of Isaiah Morter to the Association to which the testator made substantial gifts. The widow challenged the validity of the gift, and the Chief Justice declared that the gift was void for illegality, and as being against public policy, and that the testator died intestate. He held that the gift was illegal because in his view the association intended to effect "the redemption of Africa" by revolution and war and to establish a "Black Republic." On behalf of the appellant Association it was denied that the object of the gift was to promote war or violence.

Lord HALDANE, in delivering judgment, said that no evidence was tendered to prove the illegality of the New York Association, and in the absence of such evidence their lordships thought that the Chief Justice went too far when he held that it had been proved that the Association had been incorporated for illegal objects. It was not improbable that the course taken by the American authorities with whom the decision of this question primarily rested, was the wise one. They simply took no notice of the Association, although it was performing its charitable functions and was paying large salaries to its officers. Apparently they did not treat the exuberant oratory and belligerent ideas as so seriously put forward that the law would take cognizance of them as threats to commit crime. If that be so, this fund could not be treated as one which a foreign court could regard as unlawful. The order of the court below should be discharged and the action be dismissed.

COUNSEL: *Gavin Simonds*, K.C., and *Wilfrid Hunt*; *Sir Willes Chitty*, K.C., and *Roger S. Bacon*.

SOLICITORS: *Withall & Withall*; *Norris, Allens & Co.*

[Reported by S. E. WILLIAMS, Esq., Barrister-at-Law.]

Court of Appeal.

No. 1.

Lee *v.* **S. & J. Breckman & Co.** 13th and 16th January.

WORKMEN'S COMPENSATION—ACCIDENT—ASSAULT ON PORTER BY RAILWAY CARMAN—ALTERCATION IN COURSE OF EMPLOYMENT—SPECIAL RISK OF ASSAULT NEGATIVED—NOT ARISING OUT OF EMPLOYMENT—WORKMEN'S COMPENSATION ACT, 1925, s. 1 (1).

Appeal from an award of His Honour Judge Cluer at Shoreditch County Court, sitting as arbitrator under the Workmen's Compensation Act, 1925. The appellant was a porter employed by the respondents, who were upholsterers. On 19th September, 1927, he was carrying out furniture to load in a railway van, which had been ordered to call, and had been kept waiting a considerable time for the load, and spoke to the carman, whom he knew well, suggesting that he might lend a hand so as to enable the respondents' men to finish their work in good time. The carman resented this, and an altercation ensued, the carman getting down from the van and striking the appellant three blows in the face, the third of which so injured his eye that it had to be removed. The appellant having claimed compensation for the assault as an accident, the county court judge held that there was no special risk of assault in the class of work in which the appellant was engaged, and that it was not his employment that brought the risk of assault upon him.

On appeal, the COURT (Lord Hanworth, M.R., Atkin and Lawrence, L.JJ.) dismissed the appeal. There had been several cases in which the court held that an assault on a workman was an accident arising out of the employment, but in all those cases it was established on the facts that there was a special risk of assault attaching to the employment: *Trim Joint District Board* v. *Kelly*, 1914, A.C. 667; *Reid* v. *British and Irish Steam Packet Co.*, 1921, 2 K.B. 319, and other cases. But here the county court judge had found there was no such special risk. It was further contended, on the authority of Lord Haldane, in *Upton* v. *Great Central Railway*, 1924, A.C. 302, that active physical causation need not be proved to enable a workman to recover compensation for accident. That was not a test applicable to the present case. A better test was given by Lord Dunedin in the same case, and applying that, it had been found that the workman was not doing anything of service to the employer in incurring the resentment of his assailant. There was evidence to support the finding of the judge and no misdirection.

COUNSEL: *F. Soskice*; *W. Shakespeare*.

SOLICITORS: *Oliver L. Marlow*; *Gardiner & Co.*

[Reported by H. LANGFORD-LEWIS, Esq., Barrister-at-Law.]

High Court—Chancery Division.

Reigate Corporation *v.* **The Surrey County Council.**

Russell, J. 20th, 25th January, 9th February.

HIGHWAY—MAIN ROAD THROUGH A TUNNEL—REPAIR OF TUNNEL—COST OF REPAIR—LIABILITY OF COUNTY COUNCIL TO CONTRIBUTE TOWARDS—LOCAL GOVERNMENT ACT, 1888 (51 & 52 Vict., c. 41), s. 11, sub.-s. (2) and s. 97.

Action.

This was a special case raising the question whether a sum spent in repairing the brickwork of a tunnel by the Reigate Corporation was part of the cost of the maintenance of the road towards which the Surrey County Council were required to contribute under s. 11, sub-s. (2) of the Local Government Act, 1888. The facts were as follows:—The road, known as Tunnel-road, Reigate, for fifty-six yards ran through a tunnel, the walls and roof of which were of brick. The road is a main road, and under the above section it is the duty of the Reigate Corporation to maintain and repair it, and the Surrey County Council are bound to make an annual payment towards the cost of its maintenance. A sum had been spent on the brickwork, and the question was whether this sum was spent on the maintenance of the road.

RUSSELL, J., after stating the facts, said:—The corporation contend that the walls and roof of the tunnel are part of the road and were constructed at the same time as the road, and alternatively, that if they do not form part of the road, yet they are necessary for the maintenance of the road, and their repair is properly part of the cost of the repair of the road. The council contend that the tunnel is no part of the road, and say it is a case of a highway dedicated with an existing inconvenience, and that any repair must be done by the corporation as owners of the land the tunnel supported. The case of *R.* v. *The Inhabitants of the District of Lordsmere*, 1886, 54 L.T. 766, shows that a wall supporting a road on the slope of a hill is part of the road, and on the same principle I hold that the walls and roof of the tunnel which were built at the same time as the road and were necessary to keep the road open may properly be said to form part of the road. Assuming that the walls and roof did not form part of the road, yet their repair and maintenance are necessary for the repair and maintenance of the road, and the costs of such repair and maintenance are costs within s. 11, sub.-s. (2) of the Local Government Act, 1888. The case is analogous to that of *Sandgate Urban District Council* v. *Kent County Council*, 1898, 79 L.T. 425. There is no authority for the contention that the walls and roof of the tunnel were an inconvenience, subject to

which the road was dedicated as a highway, and were repairable by the owner of the inconvenience. It is also contended that as the person who made Tunnel-road tunnelled under the old footpath, he became liable *ratione nocumenti* to repair that part of the road which was underneath the footpath, and that the corporation, his successors in title, were therefore liable for repairs under s. 97 of the Local Government Act, 1888. This section provided as follows:—"Nothing in this Act with respect to main roads shall alter the liability of any person or body of persons corporate or incorporate not being a highway authority to maintain and repair any road or part of a road." But s. 97 does not preserve that liability in this case, because the corporation are not only successors in title, but also a highway authority. The corporation's liability to repair that part of the tunnel does not arise *ratione nocumenti*, but as the highway authority. I accordingly declare that the defendants are liable to make an annual payment towards the costs of the plaintiffs in keeping the tunnel in repair, and I direct judgment to be entered for the plaintiffs for £317, without costs.

COUNSEL: *Maurice FitzGerald, R. A. Glen.*

SOLICITORS: *Westbury Preston & Stavridi*, for *Grece and Patten*, Redhill; *Wyatt & Co.*, for *T. W. Weeding*, County Hall, Kingston-on-Thames.

[Reported by L. M. MAY, Esq., Barrister-at-Law.]

High Court—King's Bench Division

C. Simeons & Co., Ltd. *v.* **L. F. Smith.**

(F. C. Sharles, Trustee of the Property of Eugene Durand, trading as C. Merlin & Co., a Bankrupt . . . Claimant.)

Finlay, J. 6th, and 9th February.

GOODS SOLD—SUBSEQUENT BANKRUPTCY OF VENDOR—DELIVERY NOT TAKEN BEFORE DATE OF RECEIVING ORDER—CLAIM BY TRUSTEE OF BANKRUPT'S PROPERTY—BANKRUPTCY ACT, 1914, 4 & 5 Geo. 5, c. 59, s. 38 (*c*).

A vendor, trading under a firm name, sold 200 cases of vacuum flasks to the plaintiffs, who, upon payment, received delivery orders signed by the vendor's agent, in whose name and to whose order the cases were in storage. The vendor subsequently became bankrupt, and at the date of the receiving order the plaintiffs had not taken delivery of the flasks. The defendant in this action, the bankrupt's agent, claimed no interest in the flasks other than the sum of £296 18s. 8d. for charges and costs incurred in respect of warehousing, etc. A master directed that further proceedings against the defendant should be stayed, and directed that an issue be tried to decide whether the flasks were the property of the plaintiffs or of the trustee of the vendor's property, who claimed them as part of the bankrupt's estate.

FINLAY, J., deciding in favour of the plaintiffs, said that he had come to the conclusion upon the facts that the goods were not in the possession or disposition of the bankrupt under such circumstances, that he was the reputed owner thereof within the meaning of s. 38 (*c*) of the Bankruptcy Act, 1914.

COUNSEL: *Tindale Davis*, and *Harry Atkins*, for the plaintiffs; *Edward Clayton*, K.C., and *Phineas Quass*, for the claimant.

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Chamier *v.* **De Vere Hotels, Ltd.** Salter, J. 16th February.

HOTEL VISITOR—LOST JEWELLERY—STOLEN—NEGLIGENCE OF VISITOR.

The plaintiff in this action claimed £1,738 5s. from the defendants for the loss of jewellery, stolen from his room at the De Vere Hotel, Kensington, W.8, by a paint washer in the defendants' employ. He alleged that the loss occurred through the wilful act, default, or neglect of a chambermaid of the hotel in allowing the paint washer unsupervised entry into the room. The defendants denied the allegations and pleaded that the plaintiff was negligent in leaving goods of great value in an unlocked drawer in his absence.

SALTER, J., said that if the defendants were liable in this case, it was a common law liability for the full amount, and not a limited amount under the Innkeepers Act, 1863. He had to determine whether the defendants had satisfied him that the loss was caused by the plaintiff's negligence. He was of opinion on the facts that there was no negligence by the defendants, but that the plaintiff had been grossly negligent. Judgment for the defendants.

COUNSEL: *Kingsley Griffith* and *C. M. Cahn*, for the plaintiff; *Merriman*, K.C., and *Blanco White*, for the defendants.

SOLICITORS: *Johnson, Jecks & Colclough*; *J. E. Lickfold and Sons.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Probate, Divorce and Admiralty Division.

M. *v.* **M.** Lord Merrivale, P. 6th February.

DIVORCE PRACTICE—PETITION FOR JUDICIAL SEPARATION ALIMONY PENDING SUIT—NO ORDER AFTER DECREE.

Summons adjourned into court. The court dismissed this appeal from the refusal of a registrar to make an order for payment in pursuance of alimony *pendente lite* proceedings begun, but not concluded, before the pronouncement of a decree of judicial separation.

Lord MERRIVALE, P., in the course of a written judgment, said:—In support of the appeal reliance was placed on the general terms in which the Matrimonial Causes Rules Nos. 57, 58, 59 and 61 direct proceedings in respect of alimony pending suit. It was contended that the suit is not at an end, inasmuch as the decree is subject to be reviewed or rescinded by statute in certain events. Reference was made to the case of *Ver Mehr* v. *Ver Mehr*, 1921, P. 404, and it is suggested that the right of the wife to maintenance, which is in question, is a substantive right proper to be enforced irrespective of the position of the suit. The case for the husband was that, after the pronouncing of the decree, which was the final judgment of the court in the suit, there was no longer a *lis pendens*, and therefore, no such order as is sought could be made . . . The court has to apply the principles and rules upon which the Ecclesiastical Courts acted in giving relief . . . The interlocutory processes for alimony and costs are coercive means of securing, if need be, that the wife shall be heard in the cause. How purely transitory they are appears even on a slight examination of the text-books and the authorities. Under the practice of the Ecclesiastical Courts, and ever since, alimony upon judicial separation is ordered to be paid as from the date of the decree. To accept the suggestion that a suit for judicial separation is a pending suit after the decree, would involve the absurd consequence that alimony *pendente lite* and permanent alimony might be accruing at the same time, and, indeed, that a petition for each might proceed simultaneously. The practice of this court, as illustrated by the order made in the Registry, rests upon the fact that the process resorted to before decree was a privileged procedure limited by the necessities of the case, and not the exercise of a substantive right such as gives a cause of action. The necessity which could be so dealt with ceased when the decree was granted. To give a direction now for inquiry as to the wife's maintenance from March to November, 1927, while the litigation proceeded, would be a new departure. The application is therefore refused.

COUNSEL: *Bucknill*, for the appellant wife; *H. B. Durley Grazebrook*, for the respondent husband.

SOLICITORS: *Sharpe, Pritchard & Co.*; *Jaques & Co.*

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

N. *v.* N. Lord Merrivale, P. 9th February.

DIVORCE—PERMANENT MAINTENANCE—INCREASE OF RESPONDENT'S MEANS—SETTLEMENT ON AFTER-TAKEN WIFE—PETITIONER'S APPLICATION FOR INCREASE—JUDICATURE (CONSOLIDATION) ACT, 1925, 15 & 16 Geo. 5, c. 49, s. 190 (2) (*b*).

Summons adjourned into court. This appeal from an order of the registrar increasing the amount of a wife's permanent maintenance, raised the question as to the proportion of a respondent's income to be awarded. The original order was at the rate of £400 per annum for the wife and £100 per annum for the child of the marriage, a boy of seventeen.

Lord MERRIVALE, P., in the course of his judgment, said: The marital relations between the petitioner and the respondent have been brought to an end. The petitioner is not in the same position as a wife who obtained a decree of divorce *a mensa et thoro* in the old Ecclesiastical Courts. The petitioner is not now the respondent's wife, and is not in the same legal position as the old-time petitioning wife. I have called attention repeatedly to the fact that in considering the statutory rights after marriage is dissolved it is very misleading to regard the state of things as on the same basis as in the Ecclesiastical Courts, under the practice of which the wife still remained the wife and was normally entitled to one-third of the husband's earnings. About the time of the decree *nisi* the respondent's means underwent a substantial change. He had been the employee of a firm at a substantial salary with commission. Later he became possessed of a considerable share of the firm's capital, with the result that in the year 1925-26 he had available an income of not less than £1,500 a year. In 1926-27 the business was very prosperous, and the respondent's share in the business, together with his director's fees, represented an income of about £4,300 a year. The petitioner thereupon applied under s. 190 (2) (*b*) of the Judicature (Consolidation) Act, 1925, for increased maintenance proportionate to the increased prosperity of the respondent. Then a curious state of things was brought to light. The respondent had married again, and by an ante-nuptial settlement he had put, so far as was practicable, everything of which he had the disposal under the control of the second wife. . . . By that settlement, which is effectual, the husband divested himself of assets which would otherwise have been his, though it is determinable as between the parties to it. The registrar's order was drawn up on the footing of the petitioner's taking one-third of the respondent's income, assuming it to be at his free disposal, and it was made on the footing of an exceptionally good year. Nevertheless, in my view, the previous wife ought to have an increase in her maintenance. The respondent had in 1926-27 an income not far short of that in the previous year, about £1,500 a year. There is, in addition, under the determinable settlement, some £3,000 a year transferred to his second wife, but he shares the advantages of a joint establishment with her, which provides for a large part of his expenses. That leaves the £1,500 a year to be taken into account for the purposes of his first wife's maintenance. I therefore direct that the permanent maintenance to be provided for the first wife shall be £750 a year for life, less tax, and £150 a year for the son, by consent. I take into account the first wife's independent income of £145 a year.

COUNSEL: *Noel Middleton*, *H. R. Barker* and *Riviere*, for the appellant husband; *Vaisey*, K.C., and *C. L. Beddington*, for the wife petitioner.

SOLICITORS: *Indermaur & Brown*; *Waterhouse & Co.*

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

The 1928 edition of *The Stock Exchange Official Intelligence*—the official publication of the Stock Exchange—will be published on 25th March. The 1927 edition was exhausted soon after publication.

In Parliament.

Questions to Ministers.

RENT RESTRICTIONS.

Sir F. HALL (Dulwich, U.) asked the Minister of Health whether his attention had been called to criticisms regarding the omissions in and the obscurity of the Rent Restrictions Acts in the case recently heard by the Court of Appeal with respect to the position of sub-letting tenancies under the Acts; whether the Government proposed to arrange for the further extension of the Acts or whether it was their intention to introduce legislation this Session to deal with the matter on a permanent basis; and, if the latter course was proposed, would he consider as to setting up a small body to inquire into the subject and to prepare a draft measure for purposes of discussion as a preliminary to the introduction of the Bill to deal with the matter.

Mr. CHAMBERLAIN (Birmingham, Ladywood) said that his attention had been drawn to the case. He was not yet in a position to make any statement as to the future of the Rent Restrictions Acts.

Sir F. HALL asked if the Minister did not think, if there was any truth in the drastic remarks made by the learned judge, that it would be advisable to consider some small amendments to deal with the points made by the learned judge.

Mr. CHAMBERLAIN said he certainly thought there were things that might, with advantage be amended in the Act, but he was not in a position to make any statement with regard to the introduction of an amending Bill.

THE BETTING TAX.

The Chancellor of the Exchequer, in a written reply to a question by Colonel Vaughan-Morgan, says that the number of bookmakers' certificates issued during the three months beginning 1st November last, was 10,966, and the figure for the corresponding three months in 1926-27 was 10,998. The net revenue derived from betting taxation from 1st November, 1927, to 31st January, 1928, was approximately £522,100.

New Bills.

LONDON RATING.

Mr. CHAMBERLAIN (Minister of Health) introduced a bill to extend to the administrative County of London the provision of the Rating and Valuation Act, 1925, with respect to the valuation of hereditaments containing machinery and plant; to make temporary provision with respect to the deductions to be made in ascertaining rateable value; to amend ss. 11 and 37 and the fourth and fifth schedules of the said Act; and to provide for obtaining decisions on points of law with a view to securing uniformity in valuation.

The Bill was read a first time.

MARRIAGE WITH NIECES.

Sir ARTHUR SHIRLEY BENN'S Bill to make it possible for a widow or widower to marry a nephew or niece by marriage has been drafted so as to enumerate every form of nephew or niece by marriage. The measure proposes that the Deceased Wife' Sister's Marriage Act of 1907 shall be amended by providing that among the permitted marriages shall be those "between a man and any of the following persons, that is to say, his—

Deceased wife's brother's daughter;
Deceased wife's sister's daughter;
Father's deceased brother's widow;
Mother's deceased brother's widow;
Deceased wife's father's sister;
Deceased wife's mother's sister;
Brother's deceased son's widow;
Sister's deceased son's widow.

The Bill is made inapplicable to Northern Ireland.

PROPERTY AGENTS.

Mr. HARNEY (L., South Shields) asked leave, under the Ten Minute Rule, to bring in a Bill to provide for the compulsory registration of persons carrying out certain duties in connexion with landed property. At the present moment, he said, any person could put up a board and describe himself as a house and estate agent. There had been a growing number of cases in the courts in which malversation had been proved against certain persons in this business. He understood that house and estate agents were unanimously in favour of the measure.

Sir G. COURTHOPE (U., Rye) hoped the House would not give leave to introduce the measure. There were already three organisations representing the profession which would be affected by it—the Surveyors' Institution, the Auctioneers' Institute, and the Land Agents' Society—all of which were opposed to the Bill.

Leave to bring in the Bill was refused by 132 votes to 122.

Societies.

Gray's Inn.

SUCCESS AT THE BAR.

Mr. Stuart Bevan, K.C., and Mr. F. B. Merriman, K.C., M.P., took part on Thursday, the 23rd ult., in a discussion on "Success at the Bar" at a meeting of the Gray's Inn Debating Society. Mr. Gurney G. Beagley, president of the society, was in the chair, and there was a large attendance.

To Mr. Bevan was allotted the task of submitting that "hard work is the sole means to success at the Bar." He said people who advocated hard work were notoriously unpopular, and he was in the drab garb of a worker. The proposition that hard work was the sole means to success could not, of course, be taken as literally true; it must be read with reservation and qualification. He mentioned as an illustration of hard work which certainly did not lead to success at the Bar the true case of a member of the Bar who, when on circuit, sat down and wrote his opening speech, every question he proposed to put to the various witnesses, and his reply. Mr. Bevan ventured to think that his hardest work of all came in his reply, because no matter what course the case had taken, and how much his witnesses had given his case away, he faithfully delivered the reply without the omission of a single word.

Mr. Bevan said he regarded success at the Bar as having enough work in order to be in a respectable position and standing in the profession, with enough leisure to be able to see something in life other than the side presented by the contents of briefs and the discussion of other people's quarrels in court. (Hear, hear.) The hardest work he had found was waiting for the knock that never came. He was told the period of waiting was not as long now as it was thirty years ago, and he hoped that was true. Finally, he mentioned as essential to success at the Bar thorough mastery of the case in hand. (Cheers.)

"SLOW BACK; DON'T PRESS."

Mr. Merriman, speaking in opposition to the proposition that hard work is the sole means to success, enumerated other means, mentioning as important the person who marked the fee—the solicitor—and the person who arranged the fee—the clerk. A good clerk was to a barrister what a good caddie was to a golfer. He recommended the advice of Tom Morris to golfers, "Slow back; don't press." (Cheers.)

Mr. Constantine Gallop, ex-president of the Oxford Union, Mr. Patrick Devlin, ex-president of the Cambridge Union, and others took part in the discussion.

The Solicitors' Managing Clerks' Association.

The annual general meeting of this association was held on Thursday in last week at The Law Society's Hall, when the retiring president, Mr. Frank Smith, occupied the chair. The annual report and statement of accounts were submitted and on the motion of Mr. Batchelor, seconded by Mr. A. J. Charlton were unanimously passed. Mr. F. D. Hammond was elected president for the ensuing year and Mr. Frank Smith a vice-president, Mr. T. G. Fellows being re-elected hon. members' auditor and the following members elected to fill vacancies on the council caused by retirement under the rules or otherwise, viz.: Messrs. E. J. R. Bastin, J. Blackburn P. D. Chaddock, R. W. Everard, W. H. Fay, A. T. Fowler, P. Garrett, C. T. Pratt and W. Steele. Mr. Blackburn moved: "That the council be authorised to apply to the Board of Trade for its licence to direct the association to be registered as a company, under s. 20 of the Companies (Consolidation) Act, 1908," and the motion was carried unanimously. A vote of thanks to Mr. C. M. Fowler for his continued services as honorary solicitor in connexion with the application for incorporation as a company terminated the proceedings.

Law Students' Debating Society.

At a meeting of the society held at The Law Society's Hall on Tuesday, the 28th ult. (Chairman, Mr. H. Malone), the subject for debate was "That this House would welcome the adoption of the new Prayer Book proposals." Mr. Gerald Thesiger opened in the affirmative and Mr. John F. Chadwick in the negative. The following members also spoke: Messrs. W. M. Pleadwell, E. F. Iwi, R. J. B. Anderson, C. F. S. Spurrell, W. S. Jones, H. R. Davis, C. B. Head, and R. S. W. Bollard. The opener having replied, the motion was put and lost by one vote. There were twenty-two members and three visitors present.

The University of Manchester.

At the annual meeting of Convocation held on Friday, the 24th ult., His Honour Judge F. E. Bradley, M.A., LL.B., was elected as Chairman of Convocation for the ensuing twelve months.

The following were also re-elected as representatives of Convocation on the University Court:—Catherine Chisholm, M.D., B.A.; A. E. G. Chorlton, LL.B.; Alfred Haworth, B.A.; Percy Raby, M.A., LL.B.; Ethel M. Scott, M.A.

City of London Solicitors' Company

ANNUAL DINNER.

The Master (Mr. Hugh P. D. Francis, M.C.) occupied the chair at the annual dinner of the City of London Solicitors' Company, which was held at the Merchant Taylors' Hall, Threadneedle-street, on Tuesday. The Lord Chancellor, who had accepted an invitation, was unfortunately prevented by illness from being present. Among the guests were The Right Hon. The Lord Mayor, The Right Hon. Lord Ampthill, G.C.S.I., G.C.I.E., Sir Laming Worthington-Evans, Bt., G.B.E., M.P. (Secretary of State for War), Sir Thomas Inskip, G.B.E., K.C., M.P. (Solicitor-General), Lord Atkin, Lord Hanworth (Master of the Rolls), Mr. Justice Eve, Mr. Justice P. O. Lawrence, Lord Riddell, Lord Erleigh, M.C., His Honour Judge Barnard Lailey, K.C., His Honour Judge Shewell Cooper, Mr. Sheriff H. E. Davenport, J.P., C.C., Mr. Sheriff F. D. Green, Sir Walter Townley, K.C.M.G., Sir Thomas Hughes, K.C. (Chairman, General Council of the Bar), The Right Hon. Sir Patrick Hastings, K.C., Sir Ernest Gowers, K.B.E. (Chairman of The Board of Inland Revenue), Sir James Martin, J.P. (President of The London Chamber of Commerce), Alderman Sir George Wyatt Truscott, Bart., Admiral Sir O. De B. Brock, K.C.B., K.C.M.G., K.C.V.O., Lt.-Gen. Sir W. Hastings Anderson, K.C.B. (Quartermaster-General of The Forces), Mr. Robert R. J. Turner, O.B.E. (Master of The Merchant Taylors Company), Sir Ernest W. Glover, Bart. (Chairman of The Baltic), Mr. P. G. Mackinnon (Chairman of Lloyd's), Mr. R. H. March, F.C.A. (President of The Institute of Chartered Accountants), Mr. P. C. C. Francis (Past Warden), Mr. Sydney C. Scott (Past Master), Mr. A. E. Cowley, D.Litt. (Bodley's Librarian), Lt.-Col. H. S. Turnbull, J.P. (Commissioner of Police for the City of London), Sir David Murray, Bart., R.A., Mr. Alec Neilson, K.C., Mr. J. D. Botterrell, Sir Harold G. Downer, C.C., Mr. Arthur S. Stallwood (Comptroller, Westminster City Council), Mr. L. L. Whitfield, Mr. Clement Davies, K.C., Mr. W. H. K. Forbes, Sir John J. Stavridi, Mr. H. Roper Barrett, C.C., Col. H. I. Shirley, C.M.G., Sir William Barber, Mr. Dennis, H. Herbert, M.P., Sir John Pakeman, C.B.E., C.C., Mr. F. Stuart Morgan (Warden, Clothworkers Company), Mr. C. Stanley Crosse, C.C., Mr. H. Dexter Truscott, J.P., Col. J. J. Josselyn, C.M.G., D.S.O., O.B.E., Lt.-Col. R. H. R. Brocklebank, D.S.O., Mr. C. G. Syrett, Mr. L. M. Clark, O.B.E., Mr. J. T. Goddard, Mr. Leonard Wells, Mr. A. E. Steinthal (Master of The Tin-Plate Workers Company), Col. C. M. Goodbody, C.I.E., D.S.O., Mr. William Harding, O.B.E., Mr. D. N. Pritt, K.C., Mr. Stuart J. Bevan, K.C. (Hon. Counsel), The Hon. S. Henn Collins, C.B.E., Mr. Cecil A. Coward, LL.D. (President), Mr. E. R. Cook (Secretary, The Law Society), Mr. G. Stanley. Pott, Mr. J. Montague Haslip, Mr. T. H. Wrensted, Mr. E. Burrell Baggallay, Mr. Anthony Pickford (City Solicitor), Mr. M. C. Matthews, Mr. F. M. Guedella and Mr. J. H. N. Armstrong (Members of the Court); Mr. Albert S. Hicks (Hon. Auditor), Mr. Harry Knox (Senior Warden), Mr. E. J. Stannard (Junior Warden), and Mr. Arthur T. Cummings (Clerk).

The MASTER proposed the toast of "The Rt. Hon. The Lord Mayor, the Sheriffs, and the Corporation of the City of London," and in speaking of the inauguration of the company twenty years ago and the debt it owed to the then Lord Mayor, Sir George Truscott, and his encouragement and support, he referred to the loss the City had sustained in the death of Mr. Stanley-Stone, the Chief Commoner, who had been Master of the company.

The LORD MAYOR returned thanks. He said that the company produced many eminent men, not a few of whom had

joined the ranks of the corporation and had been of great service and afforded that body very valuable assistance.

Sir THOMAS HUGHES, K.C. (Chairman of the Bar Council) proposed the toast of "The Houses of Parliament." He remarked that it was said that lawyers were not popular with the public, but he could not see how the country could get on without them in view of the fact that the Home Secretary, the Secretary of State for India, and the Secretary for War were all lawyers.

Lord AMPTHILL returned thanks for the House of Lords, observing in the course of his remarks that the House of Commons might well be said to be representative of the profession, inasmuch as there were at least a dozen solicitors in it. There were a couple in the Cabinet and three in the Ministry, and the others were on the back benches.

Mr. P. G. MACKINNON (Chairman of Lloyd's) submitted the toast of "Bench and Bar."

Lord ATKIN responded for the Bench. He said he was extremely glad to meet many of those whom he had known when in practice at the Bar. It was not merely the Bar who depended upon the solicitor branch of the profession and their support in their work, but the Bench were equally dependent upon them, and they relied upon their assistance every day in the administration of justice. It was quite certain that the way in which justice was administered in this country, which he felt certain he might fairly claim to be the admiration of the entire world, would not be deserving of such admiration if it were not for the assistance afforded the Bench, owing to the manner in which the cases were put before the judges by the solicitor side of the profession. After all, lawyers everywhere recognised that they were all three, solicitors, barristers and members of the Bench, ministers of justice, and the solicitors recognised that that was so, and justice could not be administered as it was unless the judges could rely on having the whole-hearted assistance in the cause of truth that was given by the members of the solicitor branch of the profession. In these days, and all others, it seemed to him unnecessary to say much about the English Bench. The task of the judge was a difficult one. As one proof of this he mentioned a case that had come to his notice—a running down case, which was heard before a judge of the High Court—in which the foreman of the jury took a vote as to the number of the jury who were in favour of finding a verdict for the plaintiff and the number of those who were in favour of finding it for the defendant. It appeared that there were eight votes given for the plaintiff and four for the defendant. The foreman then said: "That settles it," and accordingly it was determined that the verdict should be for the plaintiff. Then he said: "Now we may consider the question of damages." One of the jurors, a lady, who had a relative in the profession, said timidly that she thought she had heard that there was some kind of an idea that a jury ought to be unanimous, to which the foreman replied: "Oh, dear no, that only applies in cases of murder," and taking the law from the foreman, the jury proceeded to consider the question of damages; and the foreman said: "Of course, on the question of damages, you four gentlemen who were for the defendant do not come in at all." (Loud laughter.) However, the four gentlemen of the jury in question protested successfully against that decision, and they were allowed to give their opinion. He mentioned this to show how unexpected the difficulties of the administration of justice sometimes became. He did not think it would occur to the judge, or to the solicitor, that it was necessary to warn the jury that in accordance with the law their verdict must be unanimous. As far as the judicial task was concerned, the position could be summed up in a very simple phrase, that it was the duty of the judge to hear and determine, and perhaps the most difficult part of his work was the hearing. After all, it was not a very difficult task for a reasonable man to come to a decision, when he knew what the actual facts were. In the great majority of the cases that came before the judges, anybody experienced in trying cases would know that the contention put forward on one side or the other revealed either impossible contentions of fact or relative contentions of fact, so as to make it reasonably certain that only one result could follow. But, nevertheless, it was the duty of the judge to hear both sides, and it did sometimes happen that the proposition of fact which appeared so sound turned out to be quite the reverse, and that the proposition of law which appeared to be irrelevant turned out, in fact, to be well founded. A man, as he knew by experience, could have a belief in a question of law which appeared to be thoroughly well established and upon which he had acted during his professional life, and it might turn out that the law had never been what he had imagined or that the law had been altered, possibly by a decision of the House of Lords. It was, as he had said, the duty of the judge to hear before he came to a decision, and, to his (Lord Atkin's) mind, justice meant hearing both sides fully, and that was a position which, he was bound to say, a great many people found it difficult to attain, but, once they had attained it, they might be relied upon to come to a correct conclusion. He thought that, upon the whole, it might be asserted that the English Bench in every sphere, the High Court, the County Court, the Magistrates' Court, was trusted, and that was because the ordinary litigant could feel that he would get a fair hearing. He did not think that any greater compliment could be paid to a judge than the compliment that was sometimes paid to him by the counsel or solicitor of an unsuccessful litigant when he came to him and said: "My client, against whom your decision was given, is satisfied with the hearing his case received." He thought that upon the whole it might be said that that was the spirit in which justice was administered in this country. (Applause.)

Sir THOMAS INSKIP, K.C. (Solicitor-General), responded for the Bar. He said that the profession was a peculiarly generous one and that, whether a man was successful or otherwise he would receive equally generous consideration at the hands of his fellow members. He could claim for the Bar that its members maintained unsullied the traditions of a great profession, and that their chief pride was that they had done their utmost to emulate those who were on the Bench, and who had taught them the lessons which they daily tried to put at the service of mankind.

Mr. F. BURRELL BAGGALLAY (Past Master), proposed the toast "The Commerce of the City," to which Sir James Martin (President, London Chamber of Commerce), responded.

Mr. Justice EVE, in submitting the toast "The City of London Solicitors' Company, coupled with the health of the Master and Wardens," said it was a pleasure to him to acknowledge on behalf of himself and his colleagues the useful support invariably and uniformly rendered to them by solicitors, members of the company, and of the profession generally.

The MASTER, returned thanks. He said that the company existed primarily to organise its members on the lines of a City Guild, and to collect the views and combine the experience of practitioners in the City on matters affecting the profession. The company worked in full accord with the parent society, The Law Society, through whom their suggestions were frequently conveyed to members of both Houses of Parliament. The City solicitors had interests which were peculiar to themselves. Membership of the company enabled them to become acquainted with others, and this made the conduct of business easier, which was for the benefit of their clients. He also spoke of the good work done by the company, particularly in the matter of legal education.

The band of the Royal Regiment of Artillery played an excellent selection of music during the dinner.

Rules and Orders.

THE BANKRUPTCY RULES (No. 1), 1928, DATED JANUARY 2, 1928, MADE UNDER SECTION 132 OF THE BANKRUPTCY ACT, 1914 (4 & 5 GEO. 5. C. 59).

1. Rules 230 and 231 of the Bankruptcy Rules, 1915,(*) shall be annulled and the following Rules shall be substituted therefor:—

"230. In every case of an application by a bankrupt for his discharge, the Official Receiver shall file his Report and send a copy thereof to the bankrupt by registered post not less than seven days before the time fixed for hearing the application.

231. Where a bankrupt intends to dispute any statement with regard to his conduct and affairs contained in the Official Receiver's report, he shall, not less than two days before the hearing of the application for discharge, file in Court a notice in writing, specifying the statements in the report, if any, which he proposes at the hearing to dispute and serve a copy of the notice upon the Official Receiver. Any creditor who intends to oppose the discharge of a bankrupt on grounds other than those mentioned in the Official Receiver's report, shall not less than two days before the hearing of the application file in Court a Notice in writing of the intended opposition stating the grounds thereof and serve a copy of the notice upon the Official Receiver and upon the bankrupt."

2. These Rules may be cited as the Bankruptcy Rules (No. 1), 1928, and shall come into force on the 1st day of February, 1928, and the Bankruptcy Rules, 1915, as amended, shall have effect as further amended by these Rules.

Dated the 2nd day of January, 1928.

Cave, C.

I concur.

P. Cunliffe-Lister,
President of the Board of Trade.

(*) S. R. & O. 1914 (No. 1824) I, p. 41.

THE RULES IN LUNACY (PERSONAL APPLICATION FEES), 1928. DATED JANUARY 13, 1928.

I, George Viscount Cave, Lord High Chancellor of Great Britain, with the concurrence of the Lords Commissioners of His Majesty's Treasury, do hereby in pursuance and execution of the powers given by section 148 of the Lunacy Act, 1890,(*) make the following Rules :—

1. The following Rule shall be inserted after Rule 129 in the Rules in Lunacy, 1892,(†) and shall stand as Rule 129A :—

"129A.—(1) The following fees shall be payable in respect of all applications made through the Personal Application Department :—

(i) On all originating proceedings for the appointment of a Receiver where it is made to appear to the Master that the annual value of the estate to be dealt with

(*a*) does not exceed £50 .. .. 5s.

(*b*) exceeds £50 but does not exceed £100 .. .. 10s.

(*c*) exceeds £100 in respect of the first £100 .. 10s.

in respect of every additional £50 or any part thereof .. .. 10s.

(ii) On all subsequent Orders .. .. 5s.

(2) The fees in respect of originating proceedings shall be paid at the time of the application and those in respect of subsequent proceedings on the drawing up of the Order.

(3) These fees shall be paid by means of impressed judicature stamps and shall be additional to the fees payable under Rule 129 of these Rules, but shall be deemed to include the actual costs of the draft Order and two office copies of the Order.

(4) The fees payable under this Rule shall not be payable in the case of any person exempted from payment of fees under Rule 129 of these Rules by the last proviso to that Rule."

2. These Rules may be cited as the Rules in Lunacy (Personal Application Fees) 1928, and shall come into operation on the 31st day of January, 1928, and the Rules in Lunacy, 1892, as amended shall have effect as further amended by these Rules.

Dated the 13th day of January, 1928.

Cave, C.

We concur,

Curzon.

David Margesson.

(*) 53 4 V. c. 5. (†) S.R. & O. Rev., 1904, VIII, Lunatic, E., p. 1.

Legal Notes and News.

Honours and Appointments.

The Lord Chancellor has nominated The Honourable Mr. Justice SALTER to be ex-officio Commissioner for England under the Railway and Canal Traffic Act, 1888.

The Board of Trade have appointed Mr. FREDERICK MURGATROYD, Official Receiver in Bankruptcy for the Manchester district, and Mr. JOHN DAVIS TURNER, Official Receiver in Bankruptcy for the Stoke-upon-Trent district, to be respectively Senior Official Receiver and Official Receiver for the Manchester district as from 9th March, on the retirement of Mr. John Grant Gibson; Mr. CYRIL JOHN PYKE, Official Receiver in Bankruptcy for the Cambridge district, to be Official Receiver in Bankruptcy for the Stoke-upon-Trent district, in succession to Mr. Turner; and Mr. FREDERICK HAROLD LANGMAID to be Official Receiver in Bankruptcy for the Cambridge district, in succession to Mr. Pyke.

Mr. NEVILLE TURTON, Barrister-at-Law, has been appointed Solicitor-General, Uganda. Mr. Turton was called by the Inner Temple in 1920.

The King has been pleased to confer the honour of Knighthood upon Mr. ROBERT MORRELL GREENWOOD, C.B.E., recently appointed Taxing Master of the Supreme Court in the place of the late Sir George King.

Mr. ARTHUR JOHN MARTIN has been appointed Registrar of His Majesty's Supreme Court for China. Mr. Martin was called by the Middle Temple in 1919.

Mr. GERALD LESLIE GREENE, Solicitor, has been appointed Assistant Prosecuting Solicitor in the office of Mr. F. H. C. Wiltshire, M.C., the Town Clerk of Birmingham. Mr. Greene was admitted in 1926.

Mr. WILLIAM CRAWFORD, solicitor, Hamilton, has been appointed Senior Deputy Town Clerk of Hamilton.

Mr. FRANCIS GERALD SCOTT, solicitor, Deputy Clerk of the Peace and Deputy Clerk of the East Sussex County Council, has been appointed Clerk of the Peace and Clerk to the Oxfordshire County Council. Mr. Scott was admitted in 1919.

Professional Partnerships Dissolved.

John Charles Potter and Alfred William Gosden, solicitors, Bank Chambers, 2 Putney-hill, Putney, S.W.15, and York House, 62 High-street, Wandsworth, S.W.18 (Sloper, Potter and Gosden), by mutual consent as from 31st December. J. C. Potter will in future carry on practice alone, at Bank-chambers, 2 Putney-hill, S.W.15, under the style of Sloper and Potter. A. W. Gosden will in future carry on practice alone at York House, 62 High-street, Wandsworth, S.W.18, under the style of Sloper and Gosden.

HENRY BOSTOCK and JOHN WESTBROOK, solicitors, Hyde and Stalybridge (Bostock & Westbrook), by mutual consent as from 31st January.

SEPTIMUS GLADSTONE WARD and THOMAS ROSE, solicitors, Newcastle-upon-Tyne (Septimus G. Ward & Rose), as from 31st December, so far as concerns S. G. Ward, who retires from the firm. T. Rose will continue to carry on the practice in partnership with Donald Hoult Rose under the same style.

Wills and Bequests.

Mr. James Bernard Paynter, solicitor, of Hendford Manor, Yeovil, who died on 8th December, aged seventy-six, left unsettled estate of the value of £80,690. He left: £3,000 to his wife to found a fund for building a church on the present site of St. Andrew's Mission Church, Preston-grove, Yeovil, and £2,000 in trust as an endowment fund, "and I make this gift conditional on an archway or tower being erected on the southern side thereof as a protection against bad weather to parties attending weddings, funerals, and other functions"; £100 each to the West Cornwall Dispensary and Infirmary, the Alnwick Hospital and Dispensary, and the Yeovil District Hospital and Dispensary; £100 and £25 a year for three years to William George Hutchinson, managing clerk; £100 to Percy Martin, head gardener; £50 each to his clerks, James G. Budden, Thomas G. Fellows and George L. Wetherfield; and £50 each to Nurse Oakshott and F. Dumford, cook.

Mr. Frederick Orton Collis, solicitor (55), Parkview, Sittingbourne-road, Maidstone, a member of Messrs. Monckton, Son & Collis, solicitors, chairman of directors of Messrs. Isherwood, Foster & Stacey, brewers, left estate of the gross value of £21,957.

Mr. William Bell Fairbrother, solicitor, of Birdhurst-road, South Croydon, and Brook House, Walbrook, E.C., who died on 27th November, aged seventy, left estate of the gross value of £16,530. He gives £100 to his clerk Frederick William Ellis, if still in his employ, and £1,000 in trust for him and his wife.

LIBELS ON SOLICITORS.

"Guilty under extreme provocation" was the plea entered at the Old Bailey by Mrs. Kathleen Richmond, lady's maid, who was sentenced to six months' imprisonment in the second division for libelling Mr. Douglas Walter Money, solicitor.

It was stated that the woman had been separated from her husband for some years, and that Mr. Money had acted on behalf of the man's family in respect of the payment of the separation allowance. Some weeks ago Mrs. Richmond wrote a letter to her brother-in-law, in which she described Mr. Money as an "unscrupulous scoundrel."

Asked by the Recorder if she had anything to say, Mrs. Richmond replied, "I was goaded into it. I had been insulted by Money."

In the witness-box Mr. Money denied the woman's allegations.

A sentence of three months' imprisonment in the second division was passed at the same court on Mrs. Henrietta Slann, of no occupation, who was convicted at the last sessions of libelling Mr. Charles Spencer Golding, a solicitor.

Dr. Morton, Governor and Medical Officer of Holloway Prison, said that having had Mrs. Slann under observation while she was awaiting sentence, he had come to the conclusion that she was insane, and he would be willing to certify her.

The Recorder said that further inquiries regarding the state of the woman's mind would be made while she was in prison.

THE LORD CHANCELLOR'S ILLNESS.

OPERATION IN NURSING HOME.

Viscount Cave, the Lord Chancellor, underwent an operation in a nursing home at Bath on Wednesday, and the following bulletin was issued the same evening by Sir Claud Schuster, Permanent Secretary to the Lord Chancellor :—

"At a consultation held yesterday, it was decided that an operation on Viscount Cave had become desirable. At the patient's request, and in order that he might have the advantage of convalescence in the country, it was decided to do this at Bath. The operation was performed at Bath to-day, and the patient's condition is satisfactory."

ROYAL FREE HOSPITAL CENTENARY.

Lord Riddell, presiding on Tuesday at the 100th annual meeting of the Royal Free Hospital, announced that the governors had decided to celebrate the centenary of the hospital by endeavouring to raise £100,000 to endow the £200,000 dental clinic, to be provided and equipped by Mr. George Eastman, of New York, and £210,000 for building developments. These developments would include "The Queen Mary Wing," so named by command of the King. The maternity department would be rebuilt, the pathological department extended, and new kitchens provided.

OLD BAILEY SESSIONS.

CEREMONIAL OPENING.

The Lord Mayor, accompanied by the Sword Bearer and the Mace Bearer, and attended by the City Marshal on horseback, drove from the Mansion House to the Sessions House, Old Bailey, on Tuesday, to open the February Session of the Central Criminal Court. Alderman Sir Rowland Blades, M.P., the Recorder of London (Sir Ernest Wild, K.C.), Mr. Sheriff H. E. Davenport, Mr. Sheriff F. D. Green, Mr. Under-Sheriff C. F. J. Jennings, and Mr. Under-Sheriff H. W. Capper were present at the opening ceremony.

The Recorder, in charging the Grand Jury, said they would find in the calendar the names of sixty-nine persons. There was one charge of murder, one of attempted murder, two of abortion, and two of robbery with violence. He noted with satisfaction that, as last session, the number of cases involving death or bodily injury was comparatively small. It was also a satisfactory feature of the calendar that there were only three charges of bigamy, whereas the usual number was about ten or twelve.

Mr. Justice Humphreys began the trial of cases in the judge's list on Wednesday.

OVERWORKED MAGISTRATES.

A suggestion recently made by Mr. Hay Halkett, the Marylebone magistrate, that in view of the congested state of the police courts, rate defaulters might conveniently be dealt with by lay justices, was supported by Mr. Bingley, his colleague, at Marylebone. Mr. Bingley said they were "snowed under" with work in the courts. The previous day nearly the whole of his lunch interval was taken up in signing rate warrants for the St. Pancras Borough Council. To the best of his recollection Marylebone was the only court where he had been called upon to take rate summonses.

The rate collector for the Marylebone Borough Council said the suggestion that the lay justices should deal with rate summonses had been placed before a committee.

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

Date.	Emergency Rota.	Appeal Court No. 1.	Mr. Justice Eve.	Mr. Justice Russell.
Monday Mar. 5	Mr. Jolly	Mr. More	Mr. More	Mr. Bloxam
Tuesday .. 6	Hicks Beach	Ritchie	*Hicks Beach	More
Wednesday 7	Synge	Bloxam	Bloxam	Hicks Beach
Thursday . 8	More	Jolly	*More	Bloxam
Friday 9	Ritchie	Hicks Beach	Hicks Beach	More
Saturday .. 10	Bloxam	Synge	Bloxam	Hicks Beach

Date.	Mr. Justice Bowes.	Mr. Justice Astbury.	Mr. Justice Tomlin.	Mr. Justice Clauson.
Monday Mar. 5	Mr. Hicks Beach	*Mr. Jolly	Mr. Ritchie	Mr. Synge
Tuesday .. 6	*Bloxam	Ritchie	*Synge	Jolly
Wednesday 7	*More	*Synge	*Jolly	Ritchie
Thursday . 8	*Hicks Beach	Jolly	*Ritchie	Synge
Friday 9	*Bloxam	*Ritchie	Synge	Jolly
Saturday .. 10	More	Synge	Jolly	Ritchie

* The Registrar will be in Chambers on these days, and also on the days when the Courts are not sitting.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate 4½%. Next London Stock Exchange Settlement Thursday, 8th March, 1928.

	Middle Price 29th Feb.	Interest Yield.	Yield with Redemption.
English Government Securities.		£ s. d.	£ s. d.
Consols 4% 1957 or after	85½	4 13 6	—
Consols 2½%	55½	4 14 0	—
War Loan 5% 1929-47	101⅞	4 18 0	4 18 9
War Loan 4½% 1925-45	97½	4 12 6	4 16 6
War Loan 4% (Tax free) 1929-42	101½	3 19 0	3 19 6
Funding 4% Loan 1960-1990	89	4 10 6	4 14 0
Victory 4% Bonds (available for Estate Duty at par) Average life 35 years	92¾	4 6 6	4 7 0
Conversion 4½% Loan 1940-44	97¼	4 12 0	4 16 0
Conversion 3½% Loan 1961	76xd	4 11 0	—
Local Loans 3% Stock 1921 or after	64½	4 13 0	—
Bank Stock	256	4 12 0	—
India 4½% 1950-55	93½	4 17 0	5 0 0
India 3½%	71	4 18 0	—
India 3%	61	4 18 0	—
Sudan 4½% 1939-73	94	4 15 6	4 17 0
Sudan 4% 1974	84	4 15 0	4 17 0
Transvaal Government 3% 1923-53 (Guaranteed by British Government, Estimated life 19 years)	85	3 13 0	4 6 0
Colonial Securities.			
Canada 3% 1938	86	3 12 0	4 18 0
Cape of Good Hope 4% 1916-36	94	4 5 0	5 0 6
Cape of Good Hope 3½% 1929-49	82	4 6 0	5 0 0
Commonwealth of Australia 5% 1945-75	100	5 0 6	5 2 6
Gold Coast 4½% 1956	94	4 15 6	4 17 6
Jamaica 4½% 1941-71	94	4 17 0	4 18 6
Natal 4% 1937	94	4 5 0	5 0 0
New South Wales 4½% 1935-45	91	4 19 0	5 7 0
New South Wales 5% 1945-65	98	5 2 0	5 3 0
New Zealand 4½% 1945	96	4 13 0	4 17 6
New Zealand 5% 1946	102	4 18 0	4 16 6
Queensland 5% 1940-60	99	5 1 0	5 3 0
South Africa 5% 1945-75	103	4 17 6	5 0 0
South Australia 5% 1945-75	98½	5 1 6	5 0 0
Tasmania 5% 1945-75	101	4 19 0	5 0 0
Victoria 5% 1945-75	99	5 1 0	5 0 0
West Australia 5% 1945-75	99	5 1 0	5 2 0
Corporation Stocks.			
Birmingham 3% on or after 1947 or at option of Corporation	63	4 15 6	—
Birmingham 5% 1946-56	103¾	4 16 6	4 17 0
Cardiff 5% 1945-65	101¼	4 19 0	4 18 0
Croydon 3% 1940-60	69¾	4 7 0	5 0 0
Hull 3½% 1925-55	77¾	4 9 6	5 0 0
Liverpool 3½ Redeemable at option of Corporation	74	4 14 6	5 0 0
Ldn. Cty. 2½% Con. Stk. after 1920 at option of Corpn.	54½	4 12 6	—
Ldn. Cty. 3% Con. Stk. after 1920 at option of Corpn.	64½	4 13 6	—
Manchester 3% on or after 1941	63	4 14 6	—
Metropolitan Water Board 3% 'A' 1963-2003	65	4 12 0	4 17 0
Metropolitan Water Board 3% 'B' 1934-2003	65	4 12 6	4 15 6
Middlesex C. C. 3½% 1927-47	83	4 5 6	4 17 0
Newcastle 3½% Irredeemable	72	4 17 0	—
Nottingham 3% Irredeemable	63	4 15 6	—
Stockton 5% 1946-66	101	4 19 0	4 19 0
Wolverhampton 5% 1946-56	102	4 19 0	5 0 0
English Railway Prior Charges.			
Gt. Western Rly. 4% Debenture	81½	4 18 6	—
Gt. Western Rly. 5% Rent Charge	100	5 0 0	—
Gt. Western Rly. 5% Preference	99	5 1 0	—
L. & N. E. Rly. 4% Debenture	78½	5 2 0	—
L. & N. E. Rly. 4% Guaranteed	75	5 6 6	—
L. & N. E. Rly 4% 1st Preference	71	5 13 0	—
L. Mid. & Scot. Rly. 4% Debenture	80	5 0 0	—
L. Mid. & Scot. Rly. 4% Guaranteed	80	5 0 0	—
L. Mid. & Scot. Rly. 4% Preference	75½	5 6 0	—
Southern Railway 4% Debenture	80	5 0 0	—
Southern Railway 5% Guaranteed	97½xd	5 2 6	—
Southern Railway 5% Preference	93xd	5 7 6	—